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MAYER • BROWN

September 11, 2009

BY HAND-DELIVERY

Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

Re: STB Docket No. AB-167 (Sub-No. 1190X)
Consolidated Rail Corporation—Abandonment
Exemption—In Hudson County, NJ

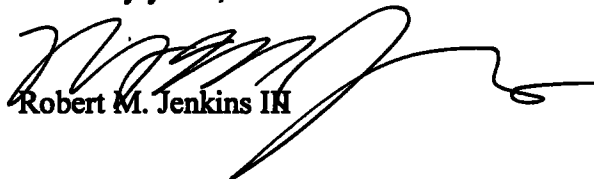
Dear Secretary Quinlan:

Enclosed for filing in the above-captioned proceeding are the original and ten copies of "Reply of Consolidated Rail Corporation to Offerors' Answer to Show Cause Order." Also enclosed is a CD containing the text of the brief and attached statements and a CD containing the oversized color map attached as Exhibit A to the Ryan statement. Please stamp the extra copy of the filing and return it with our representative.

We were advised by telephone by Eric Strohmeyer on September 9 that he intended to file a "supplemental" pleading that he would e-mail to me on September 9. He did not do so. At close of business on September 10, he e-mailed me to say that he was electronically filing a supplemental pleading with the Board and he purported to attach a copy of that filing. The only attachment to his e-mail, however, was a cover letter to the Board that indicated he was filing a "Motion to Amend and Modify the Offer of Financial Assistance" and a "Request for Extension of Time." I immediately e-mailed Mr. Strohmeyer that we had only received the cover letter. He did not respond. Also, as of noon on September 11, there was no filing by Mr. Strohmeyer shown on the Board's website.

Conrail cannot respond to a pleading it has not seen. If and when we receive Mr. Strohmeyer's pleading, we will address it promptly.

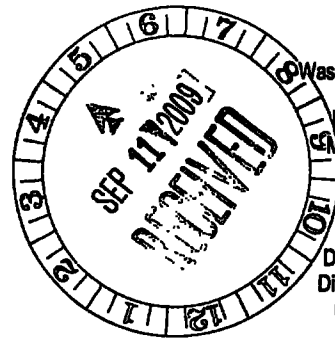
Sincerely yours,


Robert M. Jenkins III

RMJ/bs

Enclosures

cc: Eric Strohmeyer
James Riffin



ENTERED
Office of Proceedings

SEP 11 2009

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Public Record

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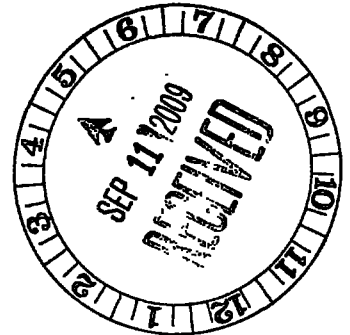
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225721

CONTAINS COLOR IMAGES

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB NO. AB 167 (SUB-NO. 1190X)



**CONSOLIDATED RAIL CORPORATION – ABANDONMENT EXEMPTION – IN
HUDSON COUNTY, NEW JERSEY**

NOTICES OF EXEMPTION

**ENTERED
Office of Proceedings**

SEP 11 2009

**Part of
Public Record**

**REPLY OF CONSOLIDATED RAIL CORPORATION
TO OFFERORS' ANSWER TO SHOW CAUSE ORDER**

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Dated: September 11, 2009

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB NO. AB 167 (SUB-NO. 1190X)

**CONSOLIDATED RAIL CORPORATION – ABANDONMENT EXEMPTION – IN
HUDSON COUNTY, NEW JERSEY**

NOTICES OF EXEMPTION

**REPLY OF CONSOLIDATED RAIL CORPORATION
TO OFFERORS' ANSWER TO SHOW CAUSE ORDER**

Pursuant to the Order of the Director, Office of Proceedings, served August 12, 2009 (hereinafter “Order to Show Cause”), Consolidated Rail Corporation (“Conrail”) hereby replies to the “Answer to Board’s 8/12/09 Show Cause Order (“Answer”) filed by James Riffin and Eric Strohmeyer (hereinafter collectively, “Riffin”) on September 1, 2009. In his Answer, Riffin attempts to show why the Board should not exempt from 49 U.S.C. § 10904 the portion of the Lehigh Valley Main Line (“the Line” or “Parcel C”) for which Riffin claims to have filed an offer of financial assistance (“OFA”).¹

¹ The portion of the Line sought by Riffin has been designated as “Parcel C.” Riffin’s OFA for this parcel should be rejected at the outset because it is not supported by a timely notice of intent to file an OFA. See 49 C.F.R. § 1152.27(c)(2)(i). The only timely OFA notice of intent in this case was made by CNJ Rail Corporation (“CNJ”). See CNJ Rail Corporation’s “Notice of Intent to File an Offer of Financial Assistance and Notice of Intent to Participate as a Party of Record” (filed Nov. 19, 2008) (“CNJ Notice”). James Riffin never filed a notice of intent to file an OFA at all, and Eric Strohmeyer filed a notice on behalf of CNJ, not in his individual capacity. See CNJ Notice at 4 (signature block expressly stating that notice was submitted “On Behalf of CNJ Rail Corporation”).

Riffin has failed to make the requisite showing. Specifically, Riffin has failed to present competent evidence of his financial responsibility and the existence of genuine need for and an interest in rail service on Parcel C. In addition, he has presented patently inadequate evidence with regard to other factors that the Board frequently considers in deciding whether to exempt lines slated for abandonment from Section 10904: that is, operational feasibility, community support, or the ability to conduct rail operations without interfering with current or planned public-purpose uses of the Line. *See, e.g., Union Pac. R.R. Co.—Abandonment Exemption—in Lassen County, CA, and Washoe County, NV*, STB Docket No. AB-33 (Sub-No. 230X), 2008 WL 4281989, at *2 (served Sept. 19, 2008) (“*Lassen County*”) (articulating showing required to avoid exemption); *see also CSX Transp., Inc.—Abandonment Exemption—in Glynn County, GA*, STB Docket No. AB-55 (Sub-No. 697X), 2009 WL 1967549, at *3 (served July 9, 2009) (“*Glynn County*”) (same); *Los Angeles County Metro. Transp. Auth.—Abandonment Exemption—in Los Angeles County*, STB Docket No. AB-409 (Sub-No. 5X), slip op. at 3 (served June 16, 2008) (“*LACMTA*”) (same).

Rather, Riffin’s response to the show cause order consists of unsupported assertions of his financial worth, undocumented claims about the interests of potential shippers in his plans, and vague and dubious claims about operational and business plans.²

LEGAL STANDARDS

That the purpose of OFAs is to preserve freight rail service is beyond dispute. *See Borough of Columbia v. STB*, 342 F.3d 222, 226 (3d Cir. 2003) (“When a carrier has applied to abandon a rail line, ‘any person’ may file an OFA, which is an offer to purchase or subsidize a

² Riffin also continues to assert that he is a “carrier,” despite the fact that, in the show cause order, the Director of the Office of Proceedings specifically pointed out that the Board has made no such determination. *See Order to Show Cause* at 1 n.2

rail line and so to facilitate continued freight rail service.”) (emphasis added); *Kulmer v. STB*, 236 F.3d 1255, 1256 (10th Cir. 2001) (firmly rejecting petitioners’ “claim [that] the STB erred in dismissing their OFA because the OFA provisions do not expressly require the STB to consider rail service continuation as a factor in approving an OFA” and upholding the STB’s consideration of future freight service as a factor in weighing OFAs); *Redmond-Issaquah R.R. Pres. Ass’n v. STB*, 223 F.3d 1057, 1063 (9th Cir. 2000) (“[W]e hold that the STB’s interpretation of § 10904 as authorizing it to reject OFAs which are not intended to enable the continuation of rail transportation is reasonable.”); *Roaring Fork R.R. Holding Auth.—Abandonment Exemption—in Garfield, Eagle, & Pitkin Counties, CO*, 4 S.T.B. 116, 119 (served May 21, 1999) (“*Roaring Fork*”) (“The OFA process is designed for the purpose of continuing to provide freight rail service, and is not to be used to obstruct other legitimate processes of law (whether Federal, state, or local) when continuation of such service is not likely.”), *aff’d sub nom. Kulmer v. STB*, 236 F.3d 1255 (10th Cir. 2001); *BNSF Ry. Co.—Abandonment Exemption—in King County, WA in Matter of OFA*, 3 S.T.B. 634, 636 (served Aug. 5, 1998) (“*King County*”) (OFA process “envision[s] that a party that acquires a rail line under section 10904 will continue to provide rail service”), *aff’d sub nom., Redmond-Issaquah R.R. Pres. Ass’n v. STB*, 223 F.3d 1057 (9th Cir. 2000).

Thus, “[i]t is well settled that the Board need not require the sale of a line under the OFA provisions if it determines that the offeror is not genuinely interested in providing rail service or that there is no likelihood of future traffic.” *Union Pac. R.R. Co.—Abandonment & Discontinuance of Trackage Rights Exemption—in Los Angeles County, CA*, STB Docket No. AB-33 (Sub-No. 265X), slip op. at 2 (footnoted omitted) (served May 7, 2008) (“*Los Angeles County*”). See also *Kulmer*, 236 F.3d at 1257 (“It would be difficult indeed to justify a statute

that forces a rail carrier desiring to discontinue freight rail service to sell its lines solely because a ‘financially responsible’ person offers to purchase them. Whereas a statute that forces the sale of potentially abandoned lines to ‘financially responsible’ persons who will continue rail service at least furthers a legitimate government interest in preserving access to, and service over, rail lines.”); *Redmond-Issaquah*, 223 F.3d at 1062 (“[T]he STB must consider whether the financial assistance being offered will enable rail transportation to be continued.”); *Roaring Fork*, 4 S.T.B. at 119-20 (“[W]hen disputed, an offeror must be able to demonstrate that its OFA is for continued rail freight service. Where, as here, the line is not currently active, there must be some assurance that shippers are likely to make use of the line if continued service is made available, and that there is sufficient traffic to enable the operator to fulfill its commitment to provide that service.”) (citations omitted) (quoted with approval in *Borough of Columbia*, 342 F.3d at 230).

In keeping with these principles, the Board has granted exemptions from Section 10904 “when the right-of-way is needed for a valid public purpose and there is no overriding need for continued rail service.” *Norfolk S. R.y. Co.—Abandonment Exemption—in Mecklenburg County, NC*, STB Docket No. AB-290 (Sub-No. 247X), 2004 WL 761303, at *2 (served Apr. 9, 2004).

In considering whether to grant exemptions, the Board has focused on whether traffic has moved on the line in the recent past, whether there are any active shippers on the line, whether the abandonment of the line might deprive rail users of rail service, the length of the line, whether an offeror’s projections are speculative or supported by verified statements or correspondence from shippers, and whether there are operational or commercial impediments to the line’s ability to sustain independent operations. *See, e.g., Lassen County*, slip op. at 6 (served Jan. 27, 2009) (plans for additional construction “demonstrate that the 220-foot segment cannot *stand alone as an operable line of railroad*) (emphasis added); *LACMTA*, 2008 WL 2780653, at

*4 (noting that Riffin, the offeror in that proceeding, had “not provided a single verified statement from a potential shipper, or even a letter or any other tangible manifestation of intent to use the Line” and had not supported his offer with a “meaningful business plan”); *Norfolk & W. Ry. Co.—Abandonment Exemption—in Cincinnati, Hamilton County, OH*, STB Docket No. AB-290 (Sub-No. 184X) (“*Hamilton County*”), slip op. at 10 (served May 13, 1998) (“We find that the section 10502 criteria for granting an exemption from the provisions of sections 10904 and 10905 have been met. The transaction is limited in scope because the Riverfront Track is only 1.5 miles long and because no shippers will lose service. No shipper has used this line for more than 11 years and because overhead shippers have competitive routing alternatives, we find no abuse of market power.”).

Thus, as the Director of Proceedings noted in an earlier decision in this proceeding,

[t]he OFA process is designed for the purpose of providing continued rail service. The Board need not require the sale of a line under the OFA provisions if it determines that the offeror is not genuinely interested in providing rail service or that there is no likelihood of future traffic. Any person who intends to file an OFA should address one or more of the following: whether there is a demonstrable commercial need for rail service, as manifested by support from shippers or receivers on the line or as manifested by other evidence of immediate and significant commercial need; whether there is community support for continued rail service; and whether rail service is operationally feasible.

Consolidated Rail Corp.—Abandonment Exemption—in Hudson County, NJ, STB Docket No. AB-167 (Sub-No. 1190X), slip op. at 2 (served Jan. 7, 2009) (footnote omitted). The Board also has directed applicants to address “whether acquisition of freight operating rights would interfere with current and planned transit services; and whether continued rail service is operationally feasible, especially where, as here, the line to be abandoned is physically constrained.” *LACMTA*, slip op. at 3 (served June 16, 2008), *quoted in Lassen County*, 2008 WL 4281989, at

*2.

Indeed, these principles are applicable to all OFAs, regardless of whether there is evidence of a valid public purpose justifying an exemption from the OFA process. *See Lassen County*, 2008 WL 4281989, at *2 (noting that although criteria referred to in *LACMTA* were described in the context of an exemption request, “the criteria remain valid for an evaluation of feasibility of an OFA request”). Thus, the Board has focused on criteria like those outlined above in cases in which the Board was considering whether to grant or deny an OFA, rather than exempt an abandonment from the OFA process. *See Los Angeles County*, slip op. at 2-3; *Roaring Fork*, 4 S.T.B. at 116-17, 119-21; *King County*, 3 S.T.B. at 640-644; *see also Redmond-Issaquah R.R. Pres. Ass’n*, 223 F.3d at 1064 (stating that the “critical factor” in the STB’s rejection of OFA in *King County* “was the STB’s determination that future traffic on the line was highly, if not totally, unlikely”).

As we show below, the Line at issue here is needed for a valid public purpose, and Riffin has failed to establish his financial responsibility and has not demonstrated that there is shipper support or commercial need for service on the Line or that his proposal is operationally or financially feasible. Regardless of whether the Line were needed for a public purpose, however, Riffin’s OFA should be rejected for failure to demonstrate either a genuine need for freight rail service, or a genuine interest in providing freight rail service, or a feasible plan for providing freight rail service.

ARGUMENT

1. The Line Is Needed For A Valid Public Purpose

As described in the accompanying verified statement of Robert W. Ryan, essential portions of the parcel sought by Riffin in his OFA are owned by New Jersey Transit and are used for New Jersey Transit’s light rail transportation services. New Jersey Transit owns the right-of-way from Mile Post 2.9 to 3.3.

In numerous cases, light transit service, like that provided by New Jersey Transit, has been deemed to be a valid public purpose supporting an exemption from the OFA process. *E.g.*, *Norfolk S. Ry. Co.—Abandonment Exemption—in Norfolk & Virginia Beach, VA*, STB Docket No. AB-290 (Sub-No. 293X), 2007 WL 3277033, at *1, *5 (served Nov. 6, 2007) (“*Norfolk & Virginia Beach*”) (creation of “light rail commuter passenger line” deemed a valid public purpose justifying exemption from Section 10904); *Norfolk S. Ry. Co.—Abandonment Exemption—in Mecklenburg County, NC*, STB Docket No. AB-290 (Sub-No. 247X), 2004 WL 761303, at *2 (served Apr. 9, 2004) (similar).

As Riffin himself states, his operational plan—such as it is—would require that his trains cross New Jersey Transit’s light rail tracks at Mile Post 3.0. *See* Riffin Answer ¶ 40. In addition, his operations would require crossing New Jersey Transit light rail tracks at around Mile Post 3.9. The only way to “connect the segment from MP 3.0 to MP 4.53, to the National Rail System” (*id.* at ¶ 41) via a connection at or near Mile Post 4.21 as contemplated by Riffin (*id.* at ¶¶ 22, 24, 26, 41, 43), and then move railroad cars from Mile Post 4.21 north toward Mile Post 3.0 would be to cross New Jersey Transit’s light rail tracks at around Mile Post 3.9. *See* Ryan V.S. at ¶ 11; *see also* Ex. A (map). It is inconceivable that the extensive trucking and railroad operation envisioned by Riffin, which would include crossing New Jersey Transit’s tracks at two different points, would not substantially interfere with New Jersey Transit’s operations.

In addition, as described in Mr. Ryan’s Verified Statement and in a March 3, 2009 letter to Conrail from the Mayor of Jersey City (attached as Ex. B to Mr. Ryan’s verified statement), the City of Jersey City is in the process of acquiring through condemnation or sale in lieu of condemnation portions of the parcel south of Linden Avenue East (at around Mile Post 4.9 and

south thereof), which the City intends to use for office buildings for certain City agencies. In fact, as Riffin himself notes (Answer ¶ 29), the City has asked that he remove the portion of the Line owned by Liberty Storage (*i.e.*, the portion of the Line from around Mile Post 4.9 to Mile Post 5.17 from his OFA because the City intends to use the land for public purposes. Riffin (with remarkable candor) reports that his response to the City's request consisted of several extortionate demands, including a 10-year tax holiday for the proposed transload. Putting aside this shameless display, which merits little response, it is clear that the City has recognized that Riffin's proposed transload operation will materially interfere with the public purposes pursued by the City—a fact that Riffin not only does not dispute but attempts to exploit.

The City also is planning to use part of the parcel sought by Riffin for residential development in accordance with the City's redevelopment plans. As the Mayor of Jersey City explained in his March 2009 letter, portions of the Line are the subject of the City's land use plans as set forth in a Redevelopment Plan referred to in the Mayor's letter. *See* Letter from Jerramiah T. Healy, Mayor, City of Jersey City, to John Enright, dated Mar. 3, 2009, at 2 (Ryan V.S. Ex. B). The subject property includes significant portions of the right-of-way (extending from around Mile Post 3.9 to around Mile Post 4.5). The City has designated PGSD LLC as the developer for this project.³ *See id.* As the Board recognized in *Hamilton County*, urban development and redevelopment uses are valid public purposes, justifying exemption from Section 10904. *See Hamilton County*, slip op. at 10.

Riffin, however, asserts that because PGSD is not a public entity, “there is no basis to support exempting from the OFA procedures” the portions of the parcel owned by PGSD. Answer ¶ 37. This assertion ignores the fact that redevelopment efforts by cities often involve

³ Riffin repeatedly refers to this entity as “PDSG.”

the use of private developers, such as PGSD. Such redevelopment plans remain “valid public purpose[s]” regardless of whether the developer is a private entity.

Thus, virtually the entirety of the parcel sought by Riffin (the former Lehigh Valley Main Line from Mile Posts 2.9-to 5.17, except for the portion of the Line between Mile Posts 4.53 and 4.9)⁴ are dedicated, or slated to be dedicated, to valid public uses. Specifically, there are valid public uses for the portions of the parcel from Mile Posts 2.9-3.3 (owned and used by New Jersey Transit), 3.9 to 4.5 (owned by PGSD for development pursuant to Jersey City redevelopment plans), and 4.9 to 5.17 (planned for condemnation or sale in lieu thereof by Jersey City).⁵

The extensive rail and trucking movements contemplated by Riffin—as well as the establishment of extensive storage points for sand that Riffin also plans—are utterly incompatible with residential re-development. Accordingly, Riffin’s proposed OFA would significantly interfere with the use of the right-of-way for valid public purposes.

In light of these facts, an exemption from the provisions of Section 10904 must be granted unless Riffin has demonstrated an overriding public need for rail service on the parcel, as well as the operational and commercial feasibility of such service, but only if Riffin also has demonstrated that he has the requisite financial responsibility. As we now show, Riffin has not

⁴ As Riffin notes, the portion of the Line between Miles Posts 4.53 and 4.90 are designated as “Parcel A” and are not encompassed by his OFA. *See* Answer ¶¶ 3-4, 27.

⁵ This leaves a stranded 0.6 mile segment (Mile Posts 3.3 to 3.9) for which there are no current or immediately planned valid public uses. Riffin, however, has not ventured any proposal that contemplates the provision or continuation of rail service on this segment in isolation. Even the use of this stranded section in combination with other segments would require crossing NJT tracks at grade at around MP 3.9, as well as Caven Point Road *See* Ryan V.S. at ¶ 11; *see also* Ex. A (map). There is no reason to think that NJT would tolerate such a crossing.

made any of the required showings, and thus has failed to carry his burden of showing cause why the Line should not be exempted.

2. Riffin Has Not Demonstrated the Requisite Financial Responsibility

The notice of intent to file an OFA in this proceeding was submitted by CNJ Rail, an entity that owns no rail assets and conducts no rail operations. *See Maryland Transit Admin—Pet. for Dec. Order*, STB Fin. Docket No. 34975, 2008 WL 4281987, at *3 (served Sept. 19, 2008). CNJ in fact appears to have been legally dissolved.⁶ The offer itself, however, was submitted by Riffin and Strohmeyer, with Riffin apparently taking control of the preparation of the Answer.

According to the Answer, the decision to file the OFA under the names of Riffin and Strohmeyer was prompted by their desire to avoid having to pay an attorney to represent CNJ (*see* Answer ¶ 38)—a calculation that itself does not instill much confidence in Riffin’s claim of financial responsibility.⁷ No doubt because CNJ itself—to the extent it exists at all—is insolvent, Riffin has chosen not to present evidence of *CNJ’s* financial ability to perform the statutory obligations of an offeror, which include conducting rail operations for a minimum of

⁶ In a filing in this proceeding in April 2009, CNJ responded to Conrail’s showing that CNJ was listed as “DISSOLVED WITHOUT ASSETS” in a report from the New Jersey State Business Gateway Service. *See* Reply of CNJ Corporation (dated April 24, 2009), at 3. CNJ asserted that the dissolution of the company resulted from a paperwork error by one of its officers, thanked Conrail for bringing the matter to its attention, indicated that it would address the issue, and stated that it would “gladly forward a copy” of its reinstatement certificate with its OFA.” *Id.* A recent check of the New Jersey State Business Gateway Service indicates that as of September 10, 2009—more than four and a half months after the April 24, 2009 CNJ reply, CNJ’s is still listed as “DISSOLVED WITHOUT ASSETS.”

⁷ Furthermore, Riffin’s OFA should be rejected because it is unsupported by a timely OFA notice. *See* note 1, *supra*. The Board strictly construes the requirement for a timely OFA notice. *See, e.g., Chelsea Property Owners—Abandonment—Portion of the Consolidated Rail Corporation’s W. 30th St. Secondary Track in New York, NY—In the Matter of Financial Assistance*, Docket No. AB-167 (Sub-No. 1094), 1993 WL 274727, at *3 (served July 22, 1993). Only CNJ filed a timely notice, and CNJ has not filed an OFA.

two years. *See* 49 U.S.C. § 10904(f)(4)(A). Instead, Riffin bases the offerors' claims of financial responsibility entirely on his asserted financial resources. His putative demonstration of financial responsibility is inadequate.

Riffin's "evidence" of financial responsibility consists solely of unsupported assertions of his assets and liabilities. He has provided no supporting documentation concerning the value of his real estate and business-related property—some of which appears to be the subject of active litigation. *See* Answer ¶ 13 (referring to litigation involving "Riffin's Allegany County, MD and Cockeyville, MD lines"). Thus, he presents no appraisals, no bank statements, and no accountant's or auditor's statements to verify his claims. Under Board precedent, such unsupported assertions of financial responsibility are patently insufficient. *See, e.g., Norfolk S. Ry. Co.—Abandonment Exemption—In Somerset County, PA*, STB Docket No. AB-290 (Sub-No. 305X), 2009 WL 217275) (dismissing OFA because proponent's statement of financial responsibility was "unsupported by concrete evidence such as income statements, balance sheets, letters of credit, or other financial statements.").

Moreover, even if he had presented competent evidence of financial responsibility, Riffin has not shown that he has sufficient resources to finance the purchase, installation, and maintenance of switches and connections, the construction and maintenance of track, and the construction and maintenance of roads that clearly would be required by his plans for a transload. Nor has he shown that he will be able to afford the costs associated with clearing and re-grading the property. (As we note below, the amount of re-grading that would be required to connect the Line to the existing National Docks line would be significant.) Finally, he has not explained how he will be able to finance the project he envisions in this OFA along with other projects (and litigation) in which he is engaged.

Thus, Riffin has failed to make the threshold showing required of all OFA offerors.

3. Riffin Has Not Demonstrated Shipper Support

In deciding whether to exempt abandonments from the OFA process set forth in Section 10904, the Board has repeatedly considered whether there are shippers on the line and “whether there is a demonstrable commercial need for rail service, as manifested by support from shippers or receivers on the line being abandoned or as manifested by other evidence of immediate and significant commercial need.” *Glynn County*, 2009 WL 1967549, at *3. *See also CSX Transp. Inc.—Abandonment Exemption—in Pike County, KY*, STB Docket No. AB-55 (Sub-No. 653X), 2004 WL 2030490, at * 2 (served Sept. 13, 2004) (noting, in exempting line to be sold for a “valid public purpose,” that “there are no shippers on the line that need continued rail service”); *Norfolk S. Ry. Co.—Abandonment Exemption—in Washington County, NC*, STB Docket No. AB-290 (Sub-No. 248X), 2004 WL 1659801, at *4 (served July 26, 2004) (in granting exemption from Section 10904, noting that the “sole shipper on the line will continue to have access to rail service from NSR”); *Central Kan. Ry., L.L.C.—Abandonment Exemption—in Sedgwick County, KS*, STB Docket No. AB-406 (Sub-No. 14X), 2001 WL 352251, at *9 (served Apr. 10, 2001) (stating, in granting exemption of Sections 10904 and 10905, that “[s]ignificantly, there do not appear to be any active rail shippers on the line”). These are principles that Riffin should know well by now, based on his past attempts at OFAs. *See Los Angeles County*, slip op. at 2 (noting, in rejecting an OFA proposed by Riffin, that “[t]here are no active shippers on the segment”); *Norfolk & Virginia Beach*, 2007 WL 4277423, at *2 (served Dec. 6, 2007) (focusing on Riffin’s failure to document support for rail service from former shippers on the line).

Here, Riffin has utterly failed to show that there are shippers or receivers on the parcel who desire freight rail service. Indeed, he has admitted that he has been unable to contact the only entity, Suydam Partners, that is even close to the parcel. See Answer ¶ 32.

Moreover, Riffin has failed to obtain a single statement from off-line shippers that express support for his proposal, much less commit to route traffic over the Line if Riffin were to obtain Parcel C through the OFA process. He also has failed to obtain a statement from Dameo Trucking, despite the fact that, in the Show Cause Order, the Director expressly noted that one of the shortcomings of the OFA was the failure to provide a statement from Dameo Trucking. See Show Cause Order, slip op. at 3.

These omissions should be sufficient by themselves to torpedo Riffin's OFA, as Riffin's own past history demonstrates. Thus, in *Norfolk & Virginia Beach*, the Board rejected a prior Riffin OFA, noting that "[w]hile Mr. Riffin asserts that each of the shippers would like rail service, he has not provided any direct evidence from the shippers themselves to support this assertion. There are no verified statements or letters from any of the shippers. Nor have any of the shippers indicated to the Board that they would like continued rail service. Mr. Riffin's unsupported assertions about conversations that he had with former shippers are insufficient to materially alter our conclusion in the November 2007 decision that there is no overriding public need for freight rail service" *Norfolk & Virginia Beach*, 2007 WL 4277423, at *2. Similarly, in *LACMTA*, the Board noted that "Riffin has not provided a single verified statement from a potential shipper, or even a letter or any other tangible manifestation of intent to use the Line, and has only offered vague claims of discussions with area businesses." *LACMTA*, 2008 WL 2780653, at *4. As Yogi Berra would say, this case is "déjà vu all over again." Once again, Riffin is trying to pass off unsupported assertions of shipper interest as evidence of commercial

need and shipper support. Once again, the Board should summarily reject these patently inadequate assertions.

There are numerous other deficiencies in Riffin's showing with regard to shipper support and commercial need for continued freight service. In the interests of brevity, we will mention just three of them.

First, the Board has considered whether shippers will experience a loss of freight rail service if the OFA is not granted, and whether they have other common carrier options available to them. *See, e.g., Hamilton County*, slip op. at 9 ("We also find that there is no overriding public need for continued rail service over the Riverfront Track. The track has not been used for more than 11 years and overhead traffic has been rerouted. No shipper will lose rail service as a result of the abandonment."); *id.* at 10 ("We find that the section 10502 criteria for granting an exemption from the provisions of sections 10904 and 10905 have been met. The transaction is limited in scope because the Riverfront Track is only 1.5 miles long and because no shippers will lose service. No shipper has used this line for more than 11 years and because overhead shippers have competitive routing alternatives, we find no abuse of market power."). Here, Riffin has not presented a shred of evidence that *any* shippers will be bereft of common carrier service if his OFA is not approved.

Second, the Board also has focused on whether a line slated for abandonment has any active shippers on it at all. *See King County*, 3 S.T.B. at 641 (refusing to credit verified statements in part because "[n]one of the companies that submitted verified statements has ever shipped or received traffic over this line"). Here, Riffin has presented no evidence that *any* of the shippers that he has spoken with (or even identified) ever shipped or received freight over the Line.

And third, the service contemplated by Riffin is highly unlikely to attract the interest of shippers who clearly already have other transportation options. Although, as noted in further detail below, Riffin's operational plans are quite vague and appear to be far from settled, it is reasonably clear that all of the movements that he is contemplating will require the movement of cars over at least two railroads (Conrail's National Docks and Riffin's own) and it is likely that many of the moves would involve more than two railroads' lines. In addition, all of the moves would involve trucks. See Answer ¶ 10. Such complicated, multi-line, multi-modal movements are unlikely to be attractive to shippers, especially given the short distances involved in the overwhelming preponderance of the hauls imagined by Riffin.

In these respects, *King County* is particularly instructive. There, the Board considered the expense that transloading and multi-carrier movements over short distances would involve, concluding that this expense raised significant doubts about the offerer's commercial projections. See *King County*, 3. S.T.B. at 642. In fact, Riffin's evidence is even weaker than the evidence proffered in *King County*. The *King County* offeror at least submitted verified statements from prospective shippers. Here, all we have is Riffin's undocumented reports of conversations with various shippers, none of whom actually committed to ship on the Line.

Moreover, here, there is no evidence Riffin has approached any of the carriers or truckers who would be involved in the multi-line, multi-modal moves in order to ascertain their rates and whether the rail carriers would agree to grant Riffin trackage rights, which presumably would be necessary for movements of the "unit trains" (Answer ¶ 10) that Riffin contemplates. Absent

such information, it is highly doubtful that any responsible potential shipper would make any commitment to utilize the portion of the Line sought by Riffin here.⁸

Accordingly, Riffin has not established that there are any shippers on the Line, much less that any such shippers support his OFA. Moreover, he has not demonstrated that there is any significant and urgent commercial need for the service. For this reason, the Board should exempt the proceeding from Section 10904.

4. Riffin Has Not Demonstrated Operational or Financial Feasibility

As noted above, an offeror must demonstrate the operational feasibility of service under an OFA. In this regard, Riffin's proposal suffers from two distinct fatal defects.

First, the proposal is so vague that it is difficult to know what the operational plan is, or whether there is one at all. An offeror cannot be deemed to have established operational feasibility by throwing vague operational scenarios against a wall and seeing if any of them stick. But that is exactly what Riffin has done. Thus, for instance, although Riffin indicates that switches could be installed at Mile Posts 4.21 and/or 5.17 to connect to the national railroad system (*see* Answer ¶¶ 22, 24, 26, 28, 41, 43), it is unclear whether he has firm plans to use either or both of the points to install a switch or switches. Similarly, it is not clear where he plans to place transload facilities along the parcel, where he plans to build roads to provide truck access to his proposed transload, whether he will be able to obtain trackage rights (and at what rates) for his unit trains moving over other railroads, and whether he will be able to work out arrangements for his unit trains to be crewed while moving over other railroads' tracks be crewed.

⁸ As we note below, the Board cannot require that carriers grant Riffin trackage rights over their lines.

Indeed, it is not even clear whether Riffin really is proposing to re-establish rail service on the parcel or whether he actually is just hoping to secure the right-of-way for a storage facility for sand and his own rail cars—a storage facility that will be served by what would really be a private track coming off active rail lines and by trucks moving the sand from the storage facility to other points. In the Answer, Riffin states that the “sand and stone” transported to the parcel would be “stored” there. Answer ¶ 10. And elsewhere in the Answer, he states that he wants to store his rail cars in Jersey City (presumably on the OFA parcel) because he does not want to store them on “Riffin’s Allegany County., MD and Cockeysville, MD lines [that] are the subject of litigation.” *Id.* at ¶ 13.⁹

In the face of such uncertainty about the essentials of Riffin’s operating plan, there simply is no basis for concluding that he has met his burden as an offeror.

The second defect in his showing on operational feasibility is that his plans clearly are *not* feasible and realistic. The attached verified statements of Robert W. Ryan and Raymond Gloede discuss these issues at length. Rather than repeat their analysis here, we will just note that his plans appear to contemplate the crossing of other entities’ properties, including active tracks of New Jersey Transit at two different locations, to establish connections, build rail lines, construct roads, and conduct operations. There is no basis to conclude that other property owners will simply acquiesce in such invasions of their property, and there is no basis for the Board to order them to do so.¹⁰

⁹ One would think that it should go without saying that an OFA may not be granted to assist a judgment debtor from having his property executed upon, but perhaps the Board may need to clarify that principle in this proceeding.

¹⁰ The fact that the property in Parcel C has been sold by Conrail subject to easements is utterly irrelevant here. Even if Conrail had not sold the property, an exemption on the basis of a valid public purpose for the abandoned Line would still be available. Moreover, the fact that buyers

Moreover, as Mr. Gloede explains, there are major operational impediments to switching trains off the National Docks Branch line to serve customers or a transload. The National Docks line is a single-track line that carries a significant amount of traffic in both directions, and it is a main connection to a number of industrial tracks. Through the use of signaling and a runaround track, traffic can flow in both directions on the single-track line, but these operations require that trains often be held on the line for considerable periods of time to allow trains to pass from the other direction. To switch trains directly from (and to) the National Docks would tie up the line for lengthy periods, disrupting the flows on the line, which already is extremely congested. See Verified Statement of Raymond Gloede ("Gloede V.S.") at ¶ 3.

The use of the Bayonne Industrial Track (at Milepost around 4.2) would pose its own problems because the portion of the Bayonne Industrial Track at that point has an "S" or reverse curve. See Gloede V.S. at ¶ 4. According to Mr. Gloede, there is insufficient tangent (straight) track between the two curves that make up the "S" curve to comply with Conrail engineering standards for the insertion of a switch. *Id.*

In addition, if Riffin's proposed use of unit trains (Answer ¶ 10) requires that other carriers grant him trackage rights (and crews) for the movements to the OFA Line, the proposal may face other insuperable obstacles. Riffin has not shown that any carriers have agreed to give him trackage rights. Nor has he shown that there is any likelihood that they would do so, or what such rights would cost. There is no basis for the Board to compel other carriers to grant trackage rights to Riffin pursuant to an OFA. Cf. *Delaware & Hudson Ry. Co.—Discontinuance of Trackage Rights Exemption—in Susquehanna County, PA and Broome, Tioga, Chemung,*

have already paid for the property reflects the buyers' strong commitment to using the property for public purposes.

Steuben, Allegany, Livingston, Wyoming, Erie, and Genesee Counties, NY, STB Docket No. AB-156 (Sub-No. 25X), 2005 WL 716001, at *2 (served Mar. 30, 2005); *The Chesapeake & Ohio Ry. Co.—Abandonment—Between Manistee and Bay View, MI and Between Traverse City and Rennies, MI*, ICC Docket No. AB-18 (Sub-No. 33F), 366 I.C.C. 53, 54 (1981). Nor, of course, can Riffin himself compel other carriers to give him trackage rights.

Moreover, as Mr. Ryan explains, the scope of Riffin's proposal will necessitate substantial re-grading in order to establish connections with existing lines. Ryan V.S. at ¶¶ 6, 10, 11. As Mr. Ryan points out, the National Docks line's track at Mile 5.17 sits high on an embankment approximately twelve feet above the grade of the OFA Line at the point where a connection could be made. To connect new tracks on the OFA Line to the National Docks line, a huge amount of fill would have to be added to raise the OFA Line to the National Docks' track. In addition, because only the National Docks' track, rather than the entire National Docks' right-of-way at that point is elevated, fill also would need to be added to the National Docks' right of way. Ryan V.S. at ¶ 6. The National Docks' line, however, is still Conrail property, and we are aware of no basis for compelling Conrail to re-grade its own line to facilitate Riffin's OFA. In any case, the costs of this re-grading are likely to be significant, and we have not seen any attempt by Riffin to account for them.

There is yet another serious operational feasibility issue that Riffin utterly ignores: his and Strohmeyer's lack of operational experience. Riffin has not shown that either he or Strohmeyer has any operational experience at all. Their ability to carry out the extremely complex operations they contemplate cannot be assumed.

Finally, it bears noting that Riffin's financial projections are wholly insufficient. He utterly fails to account for track, connection, and other facility maintenance costs. Indeed, he

even ignores the upfront costs of clearing and re-grading the property, constructing roads, and laying track. As for the costs and revenues that he does project, he provides no basis for his estimates of fixed expenses, and his revenue and expense projections appear to be predicated upon volume estimates for which he has provided no support whatsoever.

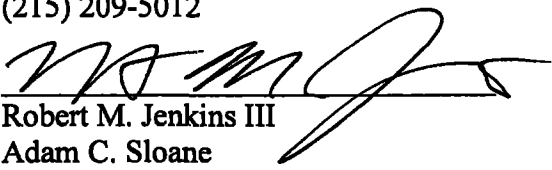
For the foregoing reasons, it is clear that Riffin has failed to demonstrate the operational feasibility of his OFA proposal.

CONCLUSION

Riffin has failed to discharge his duties under the Director's order to show cause why this proceeding should not be exempted from the requirements of Section 10904. The overwhelming preponderance of the parcel at issue here will be used for valid public purposes, and Riffin has not demonstrated that he has the requisite financial responsibility, that there is an overriding need for freight service on the Line, or that the operations that he contemplates on the Line are feasible. Accordingly, this proceeding should be exempted from Section 10904. In the alternative, Riffin's OFA should be rejected for failure to meet the fundamental requirements of genuine freight rail need, interest, and feasibility required of all OFA offerors.

Respectfully submitted,

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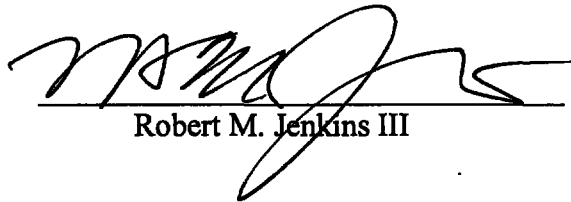
Dated: September 11, 2009

CERTIFICATE OF SERVICE

I hereby certify that on September 11, 2009, a copy of "Reply of Consolidated Rail Corporation to Offerors' Answer to the Show Cause Order" was served by overnight mail on:

Eric Strohmeier
81 Century Lane
Watchung, NJ 07069

James Riffin
1941 Greenspring Drive
Timonium, MD 21093



Robert M. Jenkins III

RYAN VERIFIED STATEMENT

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. AB-167 (Sub-No. 1190X)

CONSOLIDATED RAIL CORPORATION – ABANDONMENT EXPEMPTION
IN HUDSON COUNTY, NJ

VERIFIED STATEMENT OF ROBERT W. RYAN

I, Robert W. Ryan, being duly sworn and on my oath, submit this verified statement in response to the Answer of Eric Strohmeyer and James Riffin (the "Offerors") to the Surface Transportation Board's August 12, 2009 Show Cause Order in the above captioned proceeding (the "Answer").

1. I was employed in the real estate department of Consolidated Rail Corporation ("Conrail") from June 1976 through July 2009. Prior to my employment with Conrail, I was employed in the real estate departments of the Pennsylvania Railroad and the Penn Central Transportation Company from 1965 to 1972. My most recent position with Conrail was as Director of Real Estate, which I held from October 1996 to July 31, 2009. In that capacity, I had direct responsibility for, or was otherwise involved in, several real estate transactions affecting portions of the rail line known as the Lehigh Valley Main (the "Line"), a portion of which (milepost 2.9 to 5.17) is the subject of the above captioned Abandonment Proceeding. This Verified Statement is intended only to address those portions of the Answer that deal with the availability and feasibility of the Offerors' proposal to construct one or more aggregate (sand and stone) transloading facilities, as well as railcar storage and aggregate storage facilities on various segments of the Line.
2. As noted in the Answer, in Conrail's July 28, 2009 response to CNJ Rail's request for a Minimum Purchase Price, Conrail divided the Line into three parcels. The Offerors have expressed an interest only in Parcel C, which consists entirely of property previously sold by Conrail to third parties. The Offerors represent that they have met with representatives of various quarries, concrete plants, and asphalt plants who allegedly have expressed an interest in utilizing the Offerors' proposed transloading facility. Because the Offerors failed to submit verified statements or correspondence from any of the entities to which they refer, I cannot gauge the extent of those entities' interest in rail service and/or transload facilities on the Line, but I know of no service on the line for over 20 years, and I am unaware of any requests or demands for service on the line by any shippers during

that period. For purposes of this Verified Statement, however, I will put to one side the question whether there is such an interest. Rather, I will focus on whether the service and facilities proposed by the Offerors would be consistent with current or announced public uses of the property by entities to whom various parts of Parcel C have been sold and whether the Offerors' proposed service and facilities are operationally feasible. As I explain below, I have concluded that the Offerors' proposals are inconsistent with the public uses contemplated and planned by the current owners of portions of Parcel C and that the Offerors' plans are not operationally feasible.

3. As a preliminary matter, in their Answer the Offerors set forth details about their search to determine current property owners. They present a complex and lengthy deed analysis that I found to be difficult to comprehend, especially with respect to sales, property ownership, and property conditions subsequent to Conrail's sales of portions of the Line. I believe that the best way to properly understand Parcel C—the parcel sought by the Offerors in this proceeding—and its location relative to other rail lines and other property is through the use of an aerial map. Such a map not only can assist in identifying the current owners and disposition of various portions of the parcel but also can provide important information about how various parts of the parcel can be accessed, which is critical for assessing the likely effects of the Offerors' proposed service and facilities on existing and contemplated public uses of the property. In addition, such a map can shed light on the operational feasibility of those plans. Accordingly, attached to my Verified Statement is an aerial map of the entirety of the Line and its immediate environs ("Exhibit A"). To assist the Board in understanding the feasibility of utilizing the Line or portions thereof for the purposes identified by the Offerors, Conrail has color coded the map and labeled certain information. Our intention has been to provide a clearer (and much more accurate) overview of the Line than is set forth in the narrative supplied by the Offerors. The portions of the Line that are color coded in green are those portions previously sold by Conrail (Parcel C). The portions color coded in blue are those portions still owned by Conrail (Parcels A and B). As noted in their filings, the Offerors are only interested in the sold portions of the Line, identified as Parcel C in their Answer and as shown on Exhibit A attached hereto.
4. As noted in the preceding paragraph, in viewing the Exhibit A map, it is important to understand the location of the various rights of way and other rail lines in relation to the Line. The map is labeled accordingly. Directionally, the right side of the map is north and the left side of the map is south. The portion of the Line at issue here lies to the west of Conrail's National Docks Branch ("National Docks"). There is another Conrail freight line, the Bayonne Industrial Track, that comes off the National Docks at approximately Mile Post ("MP") 4.20 and crosses the Line and then proceeds to the south, west of (but not adjacent to) the Line. There is also a New Jersey Transit Light Rail Line ("NJT Line") that is to the east of the Line, north of MP 3.9 and to the west of the Line, south of MP 3.9.

On the far right side of the map, there is another NJT Light Rail Line that crosses under the Line running west to northeast.

5. There is only one location where the Line is immediately adjacent to the National Docks and that is at the far southern end between approximately MP 5.17 and 5.00. There is only one location where the Line is immediately adjacent to the Bayonne Industrial Track and that is where it crosses the Line at approximately MP 4.20. Connections to active lines at any other points would require the Offerors to obtain rights over intervening property that is not part of the Line. Not surprisingly, perhaps, and in possible recognition of the difficulties of obtaining rights over intervening property that is not part of the Line, the Offerors have discussed connections at or near the two points that I identified in the first two sentences of this paragraph. For the reasons discussed below, I believe that there are substantial physical, practical and legal obstacles to connecting a new track to the active freight rail line at both these points.
6. I will first address Offerors' proposal to connect to the National Docks at between MP 5.00 and MP 5.17 as described in paragraph 28 of their Answer. Offerors incorrectly state that the National Docks "crosses the Line at MP 5.17." This is not true. At MP 5.17 (the beginning of the portion of the Line to be abandoned), the National Docks is adjacent to the Line but does not cross over it. More importantly, the National Docks track (but not the entire right-of-way) sits atop a fairly steep earthen embankment that slopes down to ground level. The track is approximately twelve feet or more above grade of the Line at this location. In order to connect new tracks to the National Docks at this location, approximately twelve feet of fill would have to be placed on the Line property (that is, on Parcel C at the point of connection) to raise it to the height of the National Docks track. Furthermore, in order to accommodate a connection to a newly elevated part of the Line, a portion of the Conrail National Docks right-of-way would also have to be raised (because, as noted, only the track portion is twelve feet or more above grade). Any change in the grade of Conrail's property (that is, on the property occupied by the National Docks) would, of course, require permission from Conrail, and I am not aware of any legal obligation on Conrail's part to grant such permission. Because I have not seen Offerors' cost estimate for their proposed transloading facility, I do not know whether they have factored in the costs of re-grading the property. I note, however, that the Offerors failed to attach to their Answer any diagrams depicting the physical configuration of the proposed facility.
7. Moreover, as set forth in the attached letter from Jersey City Mayor Jerramiah T. Healy to John K. Enright (attached hereto as Exhibit B), Jersey City is in the process of acquiring through condemnation or sale in lieu of condemnation the portion of the Line between around MP 4.9 and MP 5.17. On page 2 of his letter, the Mayor notes that "the City does have an interest in the line south of Linden Avenue ... for inclusion in a tract to which the City hopes to construct office buildings into which to relocate certain City agencies." That remains the City's

position and, accordingly, it has passed ordinances to that effect. Consistent with this, as the Offerors themselves note, outside counsel for Jersey City requested that the Offerors remove this portion of the Line from their OFA since the proposed use of the property for a transloading facility (consisting of four tracks with 20 foot access roads) is incompatible with the public use identified and actively being pursued by the City. Some of the property slated for development by the City is owned by Liberty Storage and some is owned by Metro Realty LLC. I have been informed that Conrail's law department has received numerous inquiries from real estate counsel for Liberty Storage regarding the status of this proceeding so that Liberty may proceed with its negotiations with the City.

8. The Offerors also have not presented anything approaching a detailed rail operating plan. Merely installing a switch at adjoining active track does not guarantee that the proposed facility can actually be served. As shown in the Verified Statement of Ray Gloede (filed contemporaneously with this statement as Attachment B to Conrail's reply to the Answer), there are serious—and likely insurmountable—obstacles to the feasibility of rail service to the Line from a connection to the National Docks at MP 5.17.
9. The other location where the Line connects or is adjacent to an active rail freight line is at MP 4.20, where the Bayonne Industrial Track crosses the Line to connect to the National Docks. Prior to the formation of Conrail, the current Bayonne Industrial Track, the National Docks, and the Line were owned by the Lehigh Valley Railroad. In 1945, the City acquired from the Lehigh Valley Railroad portions of the Line from Chapel Avenue across Linden Avenue to the National Docks. The Lehigh Valley reserved a fifty foot right-of-way, which subsequently was used for the Bayonne Industrial Track. In 1966 and 1968, Jersey City foreclosed on property owned by the Lehigh Valley Railroad north of Chapel on either side of the Line between approximately MP 4.50 and 4.20 up to the fifty foot right-of-way for what is now the Bayonne Industrial Track crossing. At present, PGSD LLC, a developer designated by the City to spearhead redevelopment efforts at and near the Line, owns the portion of the Line between approximately MP 3.9 to MP 4.5, except for the fifty foot right-of-way, over which it has an aerial easement for pedestrian and vehicular purposes in connection with its development of the property. And, as noted in the letter from Jersey City Mayor Healy to Conrail (Ex. B), the City intends to sell an adjoining City-owned parcel to PGSD LLC for redevelopment. (In his letter, the Mayor erroneously refers to PGSD as "P.S.G.E.") Thus, the area surrounding MP 4.2, where the Offerors have indicated that they may connect to the Bayonne Industrial Track, is slated for development pursuant to the City's redevelopment plans. I understand that the development contemplated by the City for this area would be residential in nature. It is inconceivable that an active transloading and sand and rail car storage operation could be compatible with such a public use of the parcels. Thus, the Offerors' proposal to connect to the Bayonne Industrial Track in order to establish a transloading facility would preclude the use of this portion of the Line for a large City sponsored residential redevelopment project or

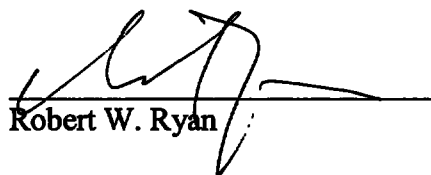
projects. It also would strand two parcels owned by the City as well as properties owned by others on either side of the Line that also are slated for the same redevelopment. I understand that these projects are well along in the planning stages.

10. In addition, the properties comprising the Line at and around MP 4.5 and MP 4.2 and the properties surrounding it are heavily wooded and well below grade at Chapel Avenue and above grade at the Bayonne Industrial Track crossover track. To develop the property for a transloading facility would require substantial and expensive clearing of the property, as well as extensive re-grading of it. Again, I do not know whether these costs have been factored into the Offerors' business plan. And once again, the Offerors have failed to discuss how trucks would access the facility. Nor have they presented a rail operating plan. Moreover, as Mr. Raymond Gloede's Verified Statement shows, there are significant operational constraints that would impede, if not completely foreclose, the use of connection to and from the Bayonne Industrial Track at MP 4.2.
11. The Offerors also discuss the use of portions of the Line that were previously sold to New Jersey Transit ("NJT"). They claim they had difficulty establishing what portion of the Line NJT actually owns. Attached as Exhibit C are the two deeds from Conrail (MP 2.9 to 3.1), as well as evidence of a condemnation by NJT (MP 3.1 to 3.3). The attached aerial map (Ex. A) clearly identifies those properties. There are only two points directly adjacent to the Line where the Line can be connected to active rail lines—around MP 5.17 and MP 4.20. In apparent recognition of this, the Offerors have identified these points as places where connections to active rail lines could be installed. If connections were made at either or both of these points, however, the Offerors' operations would materially interfere with City plans and NJT operations and would be physically and operationally difficult, if not impossible. If Offerors' proposed unit trains connected to the Bayonne Industrial Track at MP 4.2, and then moved north on the right-of-way toward MP 2.9, as the Offerors have indicated is likely (see Answer ¶ 41), they would have to cross at least one, and possibly two, sets of NJT tracks, one at MP 3.9 and the other at MP 3.0, as well as NJT property and facilities on the parcel between MP 2.9 and MP 3.3. At the current grade of the parcel, diamonds would have to be installed on the NJT tracks to cross them, which is an extremely expensive proposition and one that would not be acceptable to NJT. In addition, at the current grade, a unit train would also have to make a grade crossing of Caven Point Avenue at around MP 3.6. The only way to avoid the disruptions caused by a crossing at grade of active NJT tracks and Caven Point Avenue would be to elevate the line and build bridges, which would be prohibitively expensive, if it could be done at all. The Offerors, however, have not discussed whether NJT would allow them to cross NJT property and tracks and have not explained how NJT could be compelled to do so. The Offerors also state (Answer ¶ 40) that a diamond could be installed across NJT track at MP 3.0 in order to serve the Suydam Partners' building. With regard to this proposal, I note that it would encounter the same resistance from NJT as I have discussed

above and that the Offerors have admitted (Answer ¶ 32) that they have not even made contact with Suydam Partners to gauge the interest of that entity in rail service on the line. Thus, this aspect of their proposal is too speculative to merit discussion at all.

CONCLUSION

Thus, the proposed rail and transload operation set forth by the Offerors in their Answer clearly would interfere with public uses of the Line. It also would pose extremely difficult, if not insuperable, operational issues. In short, the Offerors' proposal is incompatible with valid public purposes for the line and is operationally unrealistic.


Robert W. Ryan

RYAN VERIFIED STATEMENT

EXHIBIT A

—

CONSOLIDATED RAIL CORPORATION

LEHIGH VALLEY MAIN LINE

AB 167

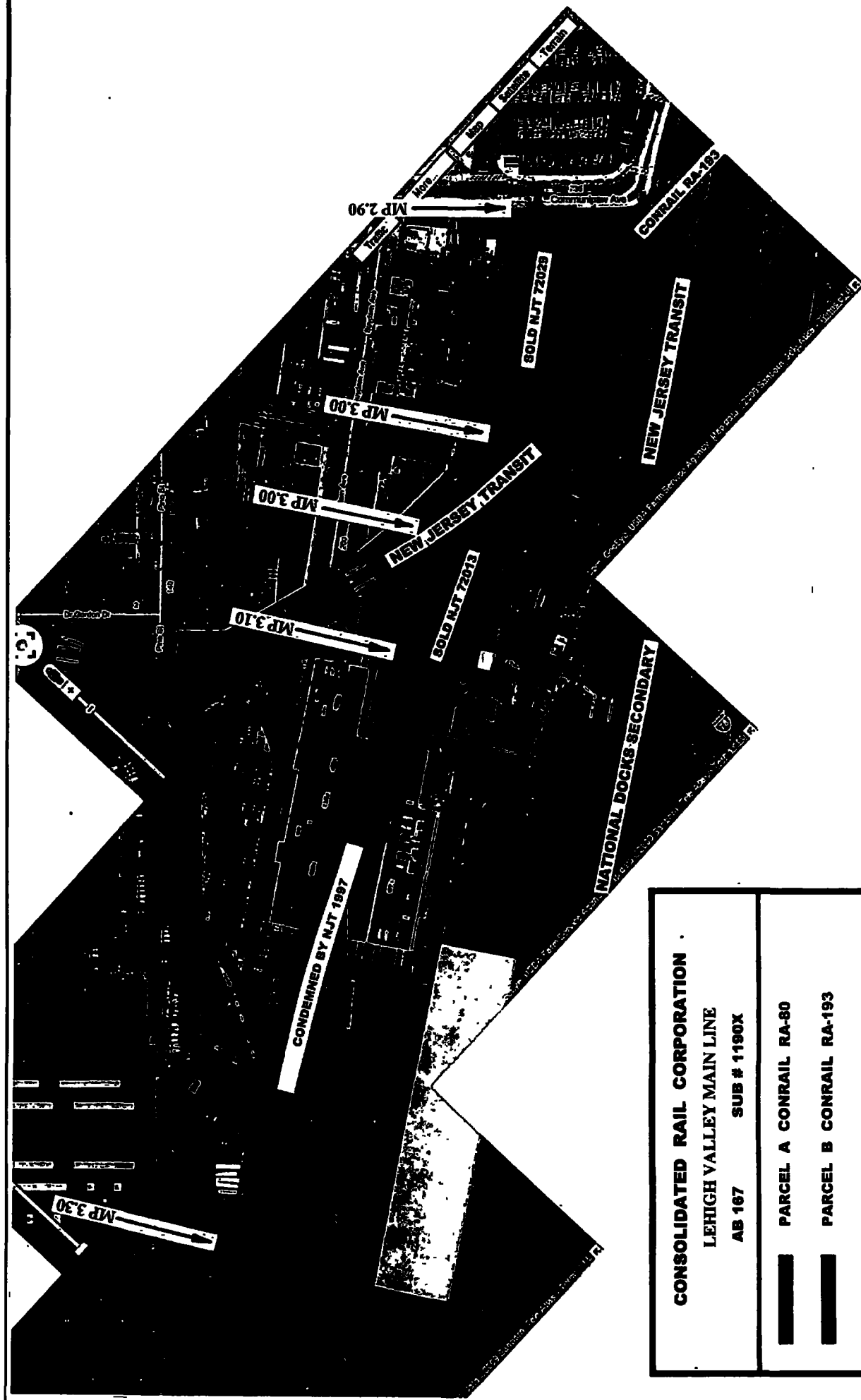
SUB # 1190X




PARCEL A CONRAIL RA-80

PARCEL B CONRAIL RA-193

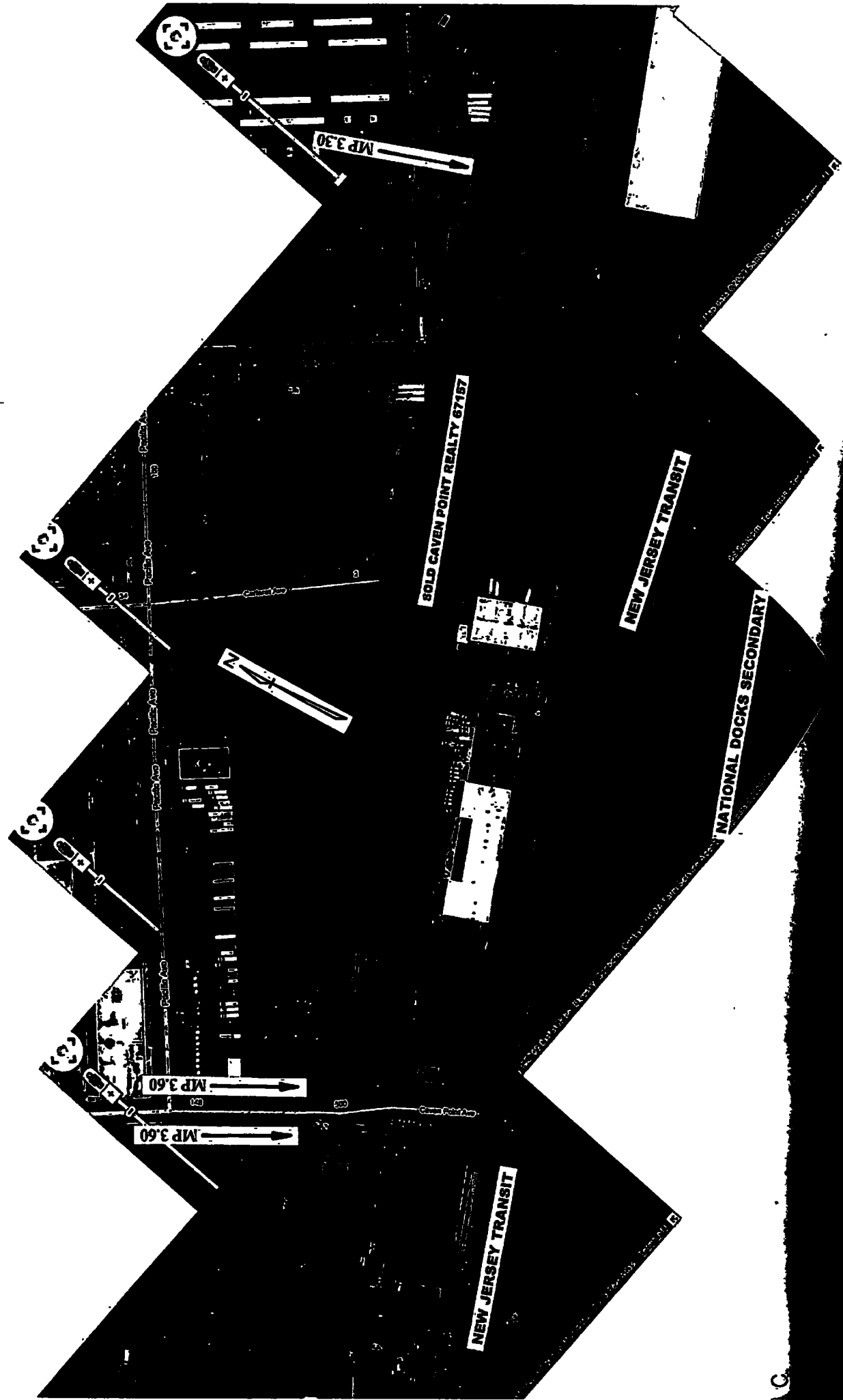
PARCEL C SOLD RIGHT OF WAY

EXHIBIT A

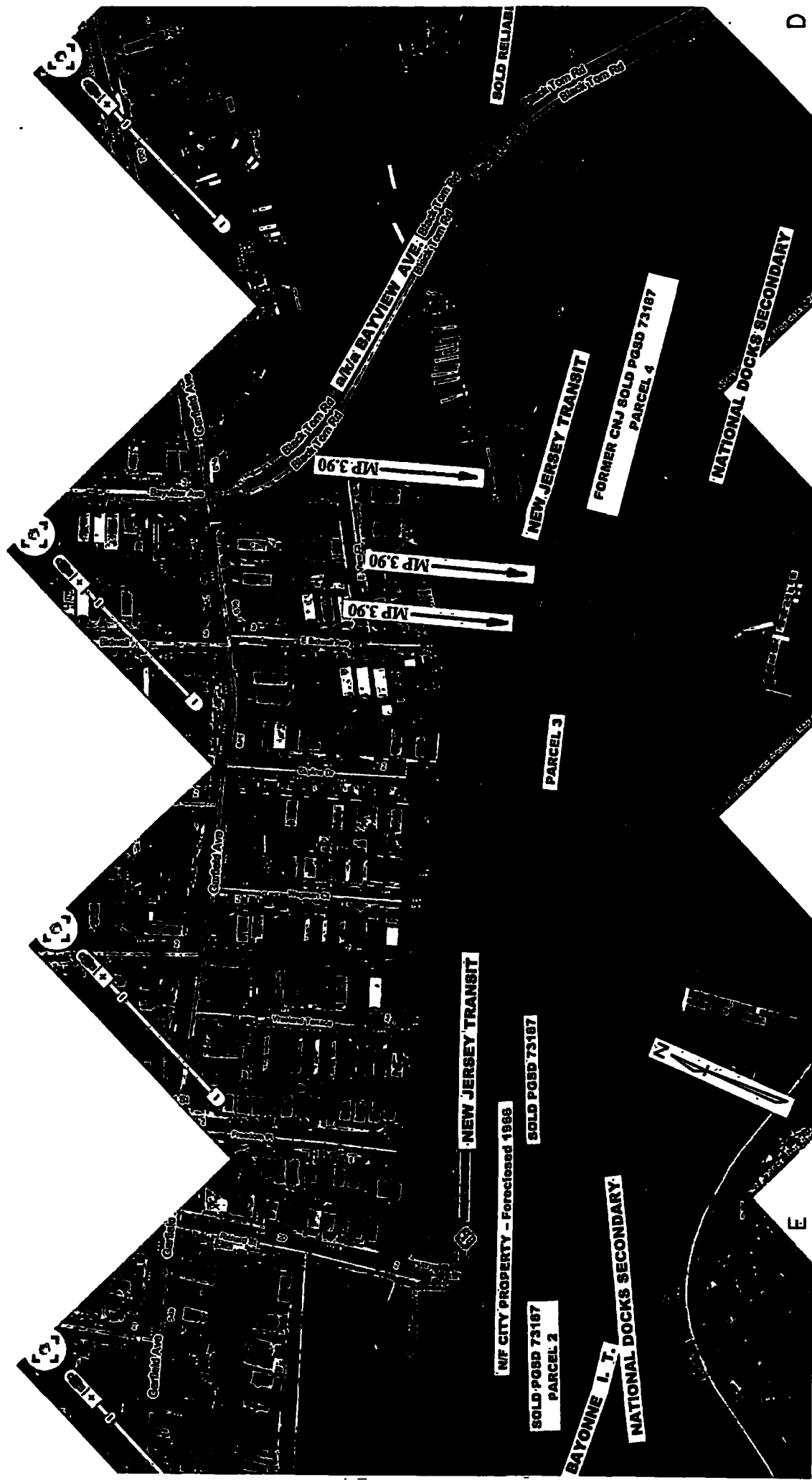


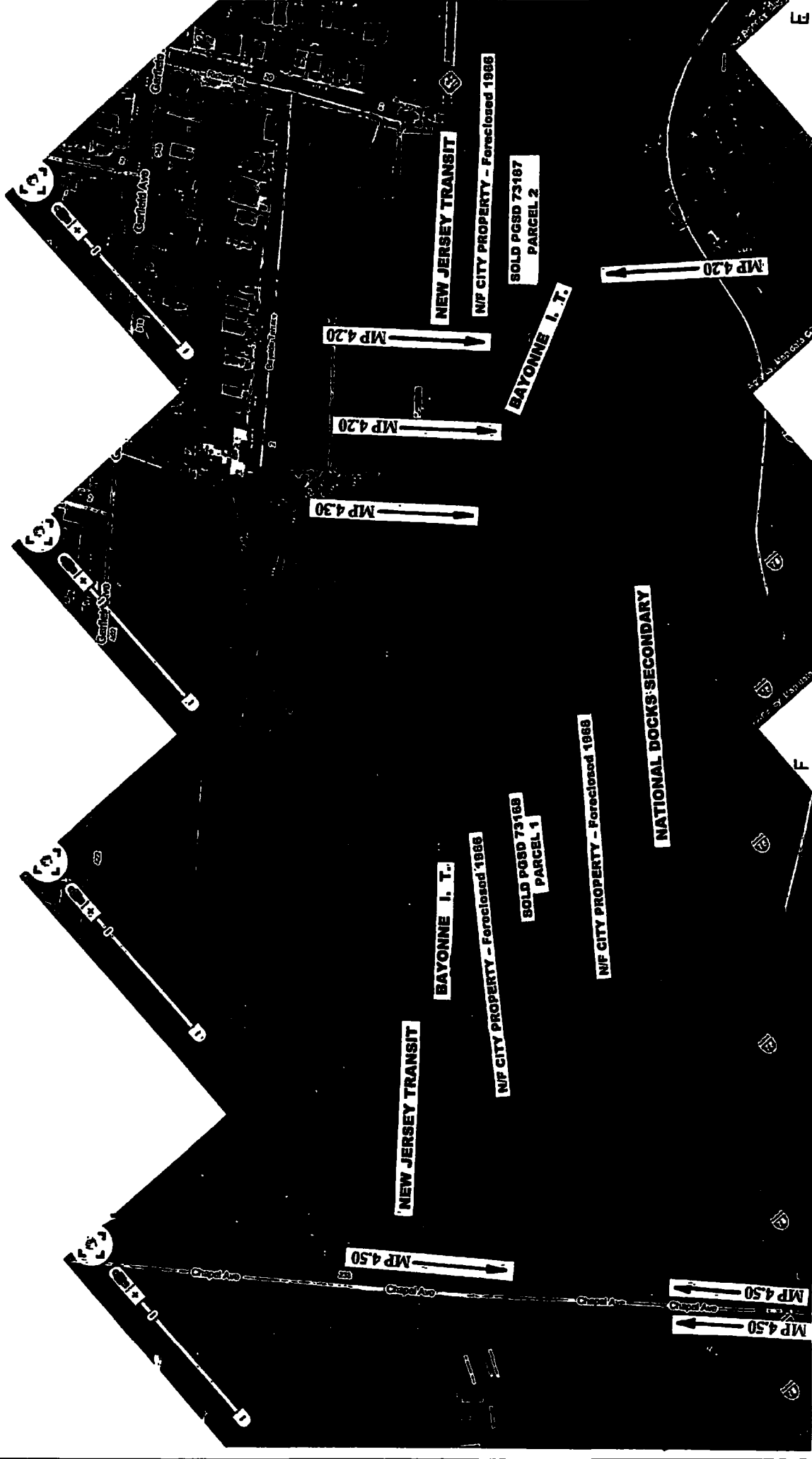
CONSOLIDATED RAIL CORPORATION LEHIGH VALLEY MAIN LINE AB 167 SUB # 1190X	
	PARCEL A CONRAIL RA-80
	PARCEL B CONRAIL RA-193
	PARCEL C SOLD RIGHT OF WAY
EXHIBIT A	

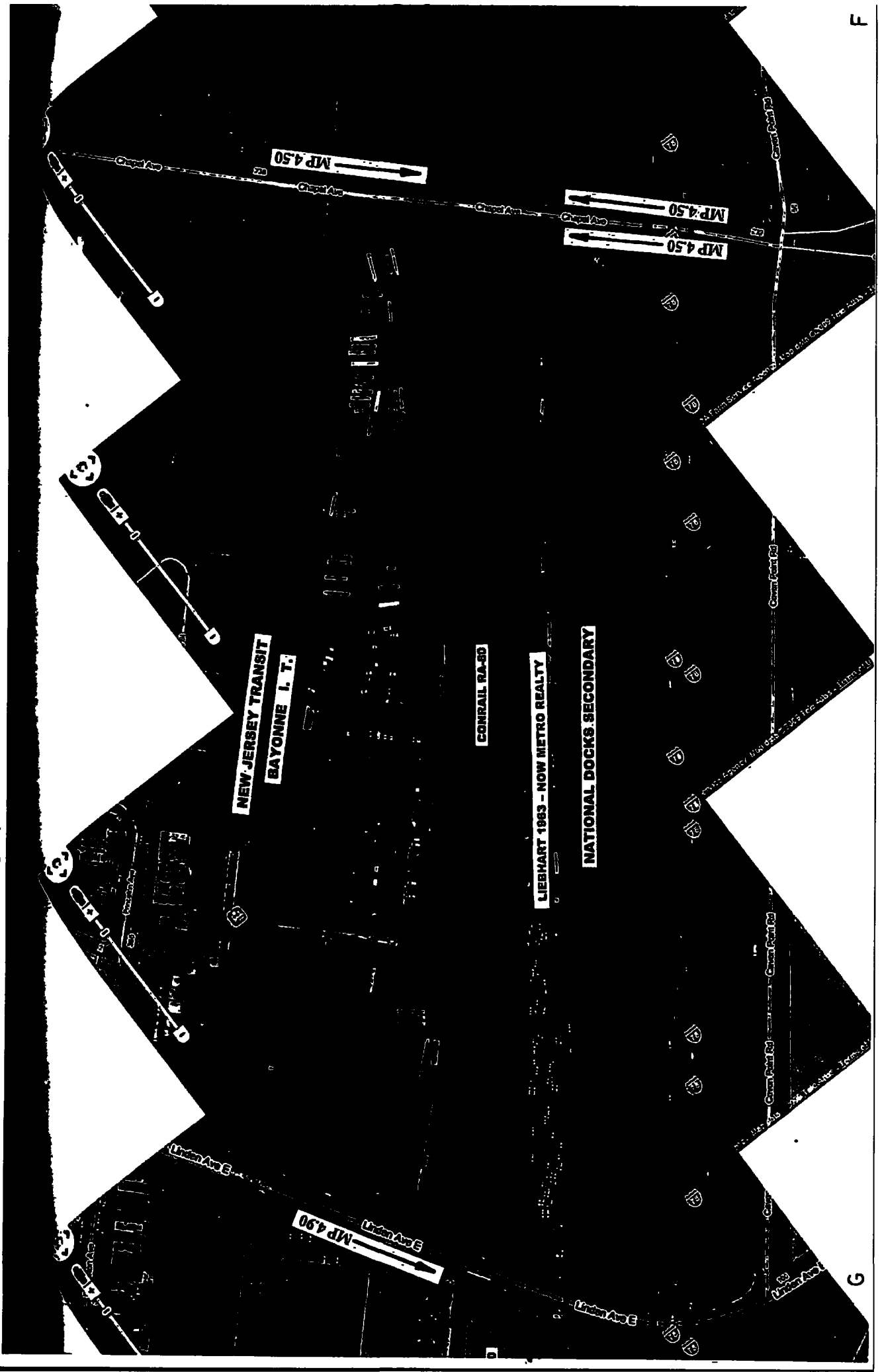
(NORTH END) A





11.





NEW JERSEY TRANSIT
BAYONNE I. T.

CONRAIL RA-30

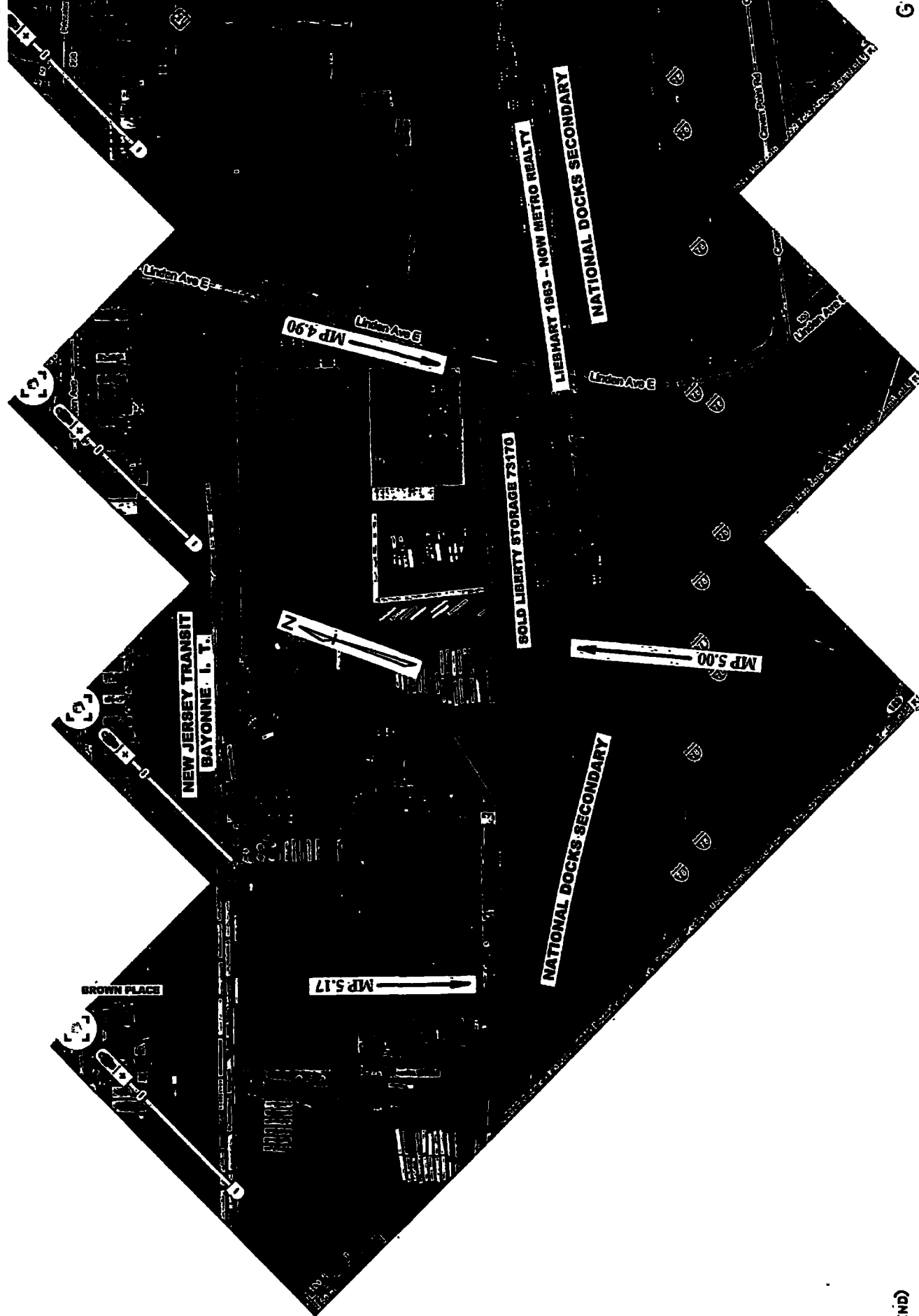
LIEBHART 1863 - NOW METRO REALTY

NATIONAL DOCKS SECONDARY

MP 4.50

MP 4.50

MP 4.90



RYAN VERIFIED STATEMENT
EXHIBIT B

CITY OF JERSEY CITY



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TEL: (201) 547-5200
FAX: (201) 547-4288

March 3, 2009

John Enright
Associate General Counsel
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Philadelphia, PA 19103

**Re: Liberty Storage LLC v. Metro Realty Corp, et al. v. Consolidated Rail, et al.
Docket No. L-3309-05
File No. 0476-82105**

Dear Mr. Enright:

This is in response to your letter of September 10, 2008, in regards to abandonment of a portion of a rail line, Code 0501, known as the Lehigh Valley Main Line located in Jersey City, New Jersey within the area proposed for the P.S.G.E. LLC/Chapel Hill Associates project. The portion of rail line, Code 0501, is depicted as traversing the Blocks and Lots on the map attached hereto as Exhibit A.

It is our understanding that prior to seeking abandonment authorization from the Surface Transportation Board (STB), most if not all the rail was removed from the line and most if not all the underlying right of way was sold. Please understand that the City relies on rail carriers operating within its City limits to comply with federal abandonment licensing requirements before they engage in de facto abandonment of rail lines. This permits the City to exercise federal and state remedies for acquisition of rail property that are based on the assumption that railroads will comply with federal abandonment licensing requirements. It also ensures compliance with environmental and historic preservation statutes.


The City follows a pragmatic approach when it is alerted to situations where, as here, a railroad has failed to obtain abandonment licensing authority prior to removing rail and selling portions of a railroad right of way. Under this approach, we evaluate the sale for consistency with local planning. As a general rule, the City will only object if there is an inconsistency or foreclosure of comment.

Conrail's abandonment of the portion of the line, north of Linden Avenue which includes the Danforth Avenue Transit Village Redevelopment area as well as the proposed P.S.G.E. LLC/Chapel Hill Associates project, conforms to Jersey City's existing land use plans for the relevant area, as is demonstrated by the attached Redevelopment Plan under Exhibit B. It is our understanding that Conrail has already sold this property to P.S.G.E. LLC/Chapel Hill Associates. The City's quasi-independent redevelopment agency (Jersey City Redevelopment Agency) intends to sell an adjoining City-owned parcel to the same party to facilitate redevelopment consistent with the City's land use plans. Redevelopment of this portion of the line will result in a more productive tax ratable for Jersey City, and will be consistent with City planning objectives.

That said, the City does have an interest in the line south of Linden Avenue. In particular, the City desires to acquire that property for inclusion in a tract to which the City hopes to construct office buildings into which to relocate certain City agencies. It is our understanding that Conrail has already sold that portion of the line to a third party. We are currently seeking to acquire that portion of the line from the third party. However, pending such acquisition, we must reserve our rights to invoke the "public use condition" remedy (49 U.S.C. 10905) at STB, and/or to insist on Conrail compliance with N.J.S.A. 48:12-125.1 in order to acquire the property directly from Conrail, if we deem it necessary or prudent. While our interest in the property south of Linden Avenue is consistent with an abandonment authorization, nothing in this letter should be deemed a waiver of our right to invoke either of the referenced statutes, or any related remedies, in or (in the case of the New Jersey statute) subsequent to a federal abandonment licensing proceeding.

Thank you for this opportunity to inform Conrail of our interests and position.

Very truly yours,


JERRAMIAH T. HEALY
MAYOR

JTH/igp

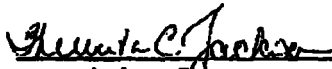
cc: Brian O'Reilly, Business Administrator
William Matsikoudis, Corporation Counsel
Robert Byrne, City Clerk

RYAN VERIFIED STATEMENT
EXHIBIT C

CASE NO. 72013

TO WHOM IT MAY CONCERN:

I HEREBY CERTIFY THAT BY THE AUTHORITY CONFERRED BY THE BOARD OF DIRECTORS OF CONSOLIDATED RAIL CORPORATION (CONRAIL) ON MARCH 18, 1988 TO THE CHAIRMAN, PRESIDENT AND CHIEF EXECUTIVE OFFICER TO CONDUCT THE BUSINESS AND AFFAIRS OF THE CORPORATION AND TO DELEGATE SUCH AUTHORITY AS HE MAY DEEM NECESSARY, THE CHAIRMAN, PRESIDENT AND CHIEF EXECUTIVE OFFICER DID REDELEGATE, FOLLOWING A SERIES OF REORGANIZATIONS AND REDELEGATIONS WITHIN CONRAIL OVER TIME, TO THE VICE PRESIDENT-LOGISTICS AND CORPORATE STRATEGY, TO THE DIRECTOR-REAL ESTATE AND TO THE DIRECTOR-ASSET UTILIZATION, OR ANY OF THEM, THE AUTHORITY TO EXECUTE AND DELIVER ON BEHALF OF CONRAIL ANY AND ALL DOCUMENTS RELATED TO THE SALE OF REAL PROPERTY UNDER \$1 MILLION PER TRANSACTION, INCLUDING TRANSACTIONS SUCH AS THE SALE OF 1.726 ACRES, MORE OR LESS, OF THE CORPORATION'S PROPERTY KNOWN AS PARCEL 203C, SITUATE IN THE VICINITY OF COMMUNIPAW AVENUE, IN THE CITY OF JERSEY CITY, HUDSON COUNTY, NEW JERSEY, FOR THE TOTAL CONSIDERATION OF \$250,000 TO NEW JERSEY TRANSIT CORPORATION (NJTC), OR THE NOMINEE THEREOF.


Assistant Secretary
WILBERTA C. JACKSON

003186
RECEIVED

97 APR -3 AM 11:16

1252
CHARGE

Barbara A. Donnelly
HUDSON COUNTY

QUITCLAIM DEED (NJ)

THIS DEED, made the 29th day of August, in the year of our Lord One Thousand Nine Hundred and Ninety-six (1996),

BETWEEN CONSOLIDATED RAIL CORPORATION, a Corporation of the Commonwealth of Pennsylvania, having an office at Two Commerce Square, 2001 Market Street, Philadelphia, Pennsylvania, 19101-1419, hereinafter referred to as the Grantor, and NEW JERSEY TRANSIT CORPORATION, an instrumentality of the State of New Jersey, having a mailing address of One Penn Plaza East, Newark, NJ 07105, hereinafter referred to as the Grantee.

WITNESSETH, that the said Grantor, for and in consideration of the sum of TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00) lawful money of the United States of America, unto it well and truly paid by the said Grantee, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, Grantor does by these presents, remise, release and forever quitclaim unto the said Grantee, the heirs or successors and assigns of the said Grantee, all right, title and interest of the said Grantor of, in and to the Premises as more particularly described on Exhibit 'A' appended hereto and made a part hereof.

This Deed is subject to the provisions of an Agreement of Sale by and between Consolidated Rail Corporation and New Jersey Transit Corporation dated August 29, 1996 governing apportionment of environmental responsibility as between Grantor and Grantee including Grantee's successors, assigns and grantees.

UNDER and SUBJECT, however, to (1) whatever rights the public may have to the use of any roads, alleys, bridges or streets crossing the Premises, (2) any streams, rivers, creeks and water ways passing under, across or through the Premises, and (3) any easements or agreements of record or otherwise affecting the Premises, and to the state of facts which a personal inspection or accurate survey would disclose, and to any pipes, wires, poles, cables, culverts, drainage courses or systems and their appurtenances now existing and remaining in, on, under, over, across and through the Premises, together with the right to maintain, repair, renew, replace, use and remove same.

THIS INSTRUMENT is executed and delivered by Grantor, and is accepted by Grantee, subject to the covenants set forth below, which shall be deemed part of the consideration of this conveyance and which shall run with the land and be binding upon, and inure to the benefit of, the respective heirs, legal representatives, successors and assigns of Grantor and Grantee. Grantee hereby knowingly, willingly, and voluntarily waives the benefit of any rule, law, custom, or statute of the State of New Jersey now or hereafter in force with respect to the covenants set forth below:

5
A COPY OF THIS DEED
HAS BEEN SENT TO ASSESSOR'S OFFICE

TAX REFERENCE:

Block 2033, Lots 5A, B and
8, on the Tax Maps for the
City of Jersey City, Hudson
County, NY

THIS INSTRUMENT PREPARED BY:

Robert J. Tracy
Robert J. Tracy, Property Manager
Consolidated Rail Corporation
510 Thomall Street, Suite 390
Edison, NJ 08837

CONSIDERATION: \$.00 EXEMPT CODE: E

COUNTY	STATE	U.P.N.S.F.	TOTAL
.00	.00	.00	.00
TJC	DATE- 4/08/1997		

OK 5124 PG 258

STATE OF NEW JERSEY
AFFIDAVIT OF CONSIDERATION OR EXEMPTION
(c. 49, P.L. 1968)
OR
PARTIAL EXEMPTION
(c. 176, P.L. 1975)

ALL-STATE LEGAL
A Division of All-States International, Inc.
800-222-0810 in NJ 908-272-0800

DEVS 1

To Be Recorded With Deed Pursuant to c. 49, P.L. 1968, as amended by c. 225, P.L. 1985 (N.J.S.A. 46:15-5 et seq.)

STATE OF NEW JERSEY

COUNTY OF HUDSON

ss.

FOR RECORDER'S USE ONLY

Consideration \$

Realty Transfer Fee

Date

By

*Use symbol "C" to indicate that fee is exclusively for county use.

(1) PARTY OR LEGAL REPRESENTATIVE (See Instructions #3, 4 and 5 on reverse side)

Deponent, SUZANNE L. SILVERMAN

being duly sworn according to law upon his/her oath deposes and says that he/she is the Legal Representative of New Jersey Transit Corporation

in a deed dated 8/29/96 transferring real property identified as Block No. 2033

Lot No. 5A, B and 8 located at Jersey City, Hudson County

and annexed hereto.

(2) CONSIDERATION (See Instruction #6)

Deponent states that, with respect to deed hereto annexed, the actual amount of money and the monetary value of any other thing of value constituting the entire compensation paid or to be paid for the transfer of title to the lands, tenements or other realty, including the remaining amount of any prior mortgage to which the transfer is subject or which is to be assumed and agreed to be paid by the grantee and any other lien or encumbrance thereon not paid, satisfied or removed in connection with the transfer of title is \$

(3) FULL EXEMPTION FROM FEE Deponent claims that this deed transaction is fully exempt from the Realty Transfer Fee imposed by c. 49, P.L. 1968, for the following reason(s): Explain in detail. (See Instruction #7.) Mere reference to exemption symbol is not sufficient.

New Jersey Transit Corporation is a public instrumentality of the

State of New Jersey (N.J.S.A. 27:25-1 et seq.)

(4) PARTIAL EXEMPTION FROM FEE NOTE: All boxes below apply to grantor(s) only. ALL BOXES IN APPROPRIATE CATEGORY MUST BE CHECKED. Failure to do so will void claim for partial exemption. (See Instructions #8 and #9)

Deponent claims that this deed transaction is exempt from the increased portion of the Realty Transfer Fee imposed by c. 176, P.L. 1975 for the following reason(s):

a) SENIOR CITIZEN (See Instruction #8)

- ☐ Grantor(s) 62 yrs. of age or over.*
☐ One or two-family residential premises

- ☐ Owned and occupied by grantor(s) at time of sale.
☐ No joint owners other than spouse or other qualified exempt owners.

b) BLIND (See Instruction #8)

- ☐ Grantor(s) legally blind.*
☐ One or two-family residential premises.

- ☐ Owned and occupied by grantor(s) at time of sale.
☐ No joint owners other than spouse or other qualified exempt owners.

DISABLED (See Instruction #8)

- ☐ Grantor(s) permanently and totally disabled.*
☐ One or two-family residential premises.
☐ Receiving disability payments.

- ☐ Owned and occupied by grantor(s) at time of sale.
☐ Not gainfully employed.
☐ No joint owners other than spouse or other qualified exempt owners.

*IN THE CASE OF HUSBAND AND WIFE, ONLY ONE GRANTOR NEED QUALIFY.

c) LOW AND MODERATE INCOME HOUSING (See Instruction #8)

- ☐ Affordable According to H.U.D. Standards.
☐ Meets Income Requirements of Region.

- ☐ Reserved for Occupancy.
☐ Subject to Resale Controls.

d) NEW CONSTRUCTION (See Instruction #9)

- ☐ Entirely new improvement.
☐ Not previously used for any purpose.

- ☐ Not previously occupied.

Deponent makes this Affidavit to induce the County Clerk or Register of Deeds to record the deed and accept the fee submitted herewith in accordance with the provisions of c. 49, P.L. 1968.

Subscribed and Sworn to before me

this 20th

day of September

1996

at Jersey City, New Jersey

Gloria D. Camisa

Notary Public for New Jersey

My Commission Expires Oct. 8, 1998

Suzanne L. Silverman, DAG
New Jersey Transit Corporation
One Penn Plaza East
Newark, NJ 07102-2246

CONSOLIDATED
RAIL CORPORATION

2001 Market Street
Two Commerce Square
Philadelphia, PA 19106-1416

FOR OFFICIAL USE ONLY This space for use of County Clerk or Register of Deeds.

Instrument Number 318 County Hudson
Deed Number 5A, B and 8 Book 1997
Deed Dated 8/29/96 Date Recorded 8/29/97

IMPORTANT - BEFORE COMPLETING THIS AFFIDAVIT, PLEASE READ THE INSTRUCTIONS ON THE REVERSE SIDE HEREOF.
This form is prescribed by the Director, Division of Taxation in the Department of the Treasury, as required by law, and may not be altered or amended without the approval of the Director.
ORIGINAL - White copy to be retained by County.
DUPLICATE - Yellow copy to be forwarded by County to Division of Taxation on partial exemption from fee (N.J.A.C. 18:18-8.12).
TRIPPLICATE - Pink copy is your file copy.

BK5124P6259

WHITE AND YELLOW COPIES MUST BE SUBMITTED WITH DEED TO COUNTY RECORDING OFFICER

(1.) Grantor shall neither be liable or obligated to construct or maintain any fence or similar structure between the Premises and adjoining land of Grantor nor shall Grantor be liable or obligated to pay for any part of the cost or expense of constructing or maintaining any fence or similar structure, and Grantee hereby forever releases Grantor from any loss or damage, direct or consequential, that may be caused by or arise from the lack or failure to maintain any such fence or similar structure.

(2.) Grantee hereby forever releases Grantor from all liability for any loss or damage, direct or consequential, to the Premises and to any buildings or improvements now or hereafter erected thereon and to the contents thereof, which may be caused by or arise from the normal operation, maintenance, repair, or renewal of Grantor's railroad, or which may be caused by or arise from vibration resulting from the normal operation, maintenance, repair or renewal thereof.

(3.) Grantee hereby forever releases Grantor from any liability for any loss or damage, direct or consequential, which may be caused by or arise from the sliding, shifting or movement of any part of any adjoining embankment of Grantor, or by the drainage or seepage of water therefrom, upon or into the Premises, or upon, under, or into anything which may be erected or placed thereon.

(4.) Grantor shall not be liable or obligated to provide lateral support for the surface of the Premises, and Grantee waives all right to ask for, demand, recover or receive any relief or compensation for any damage that may be caused by the sliding, shifting, or movement of any part of the slope or embankment supporting the Premises. Grantee shall use due diligence to prevent the drainage or seepage of water, or the precipitation of snow or ice, or anything whatever, from the Premises onto, under or upon the adjoining and adjacent lands of Grantor.

(5.) In the event the tracks or land of Grantor are elevated or depressed, or the grades of any streets, avenues, roads, lanes, highways or alleys over such railroad in the vicinity of the Premises are changed so that they shall pass overhead or underneath such tracks or land, or in the event any grade crossing is vacated and closed, Grantee forever releases Grantor from all liability for any loss or damage, direct or consequential, caused by or arising from the separation or change of grades of such railroad or such streets, avenues, roads, lanes, highways, or alleys, or from the vacating and closing of any grade crossing.

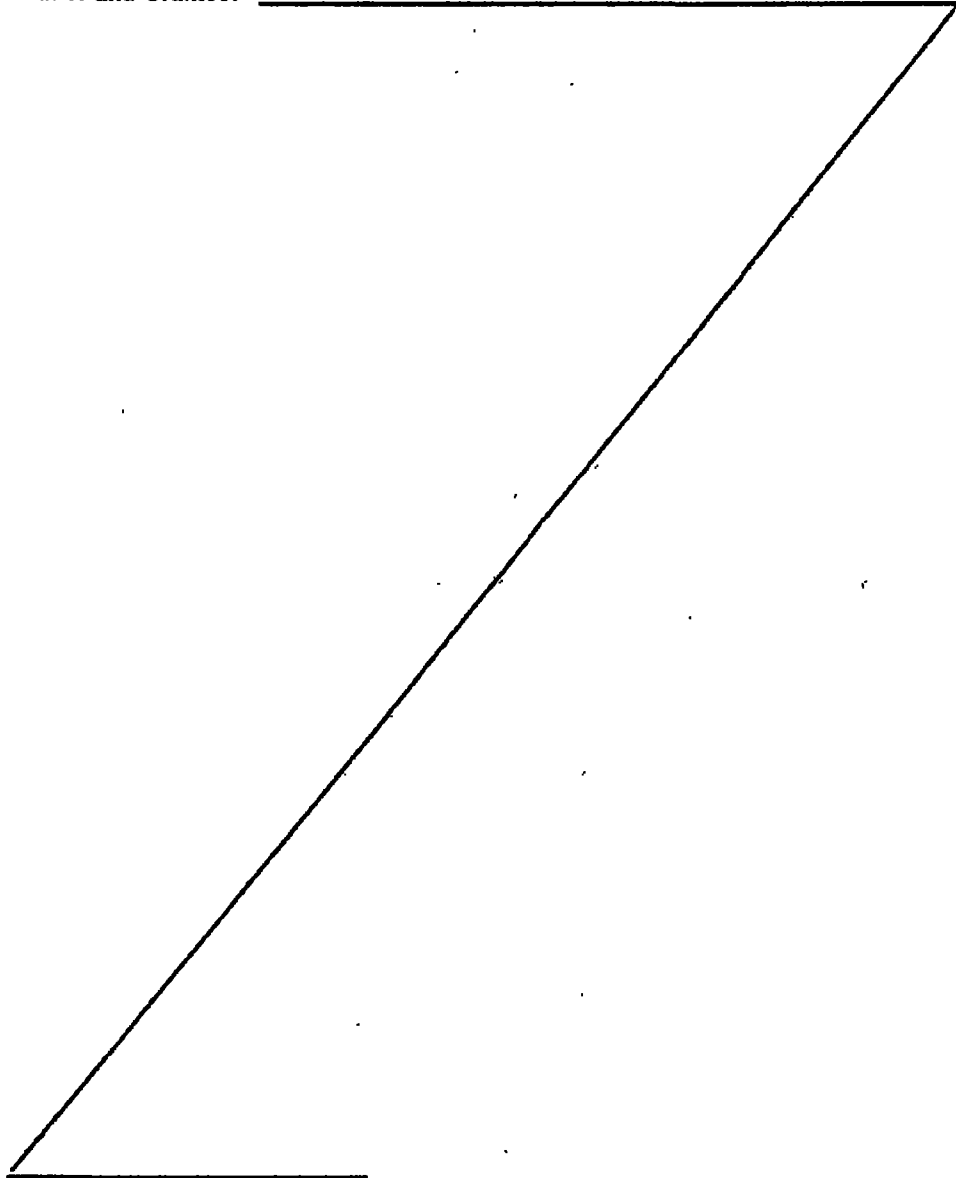
(6.) Should a claim adverse to the title hereby quitclaimed be asserted and/or proved, no recourse shall be had against the Grantor herein.

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, property, claim and demand whatsoever of it, the said Grantor as well at law as in equity or otherwise howsoever of, in and to the same and every part thereof, UNDER and SUBJECT and provided as aforesaid.

TO HAVE AND TO HOLD, all and singular the said Premises, together with the appurtenances, unto the Grantee, the heirs or successors and assigns of the Grantee, forever, UNDER and SUBJECT and provided as aforesaid.

A COPY OF THIS DEED
HAS BEEN SENT TO ASSESSOR'S OFFICE

THE words "Grantor" and "Grantee" used herein shall be construed as if they read "Grantors" and "Grantees", respectively, whenever the sense of this instrument so requires and whether singular or plural, such words shall be deemed to include at all times and in all cases the heirs, legal representatives or successors and assigns of the Grantor and Grantee.



IN WITNESS WHEREOF, the Grantor has caused this indenture to be signed in its

name and behalf by its Director-Real Estate duly authorized thereunto and has caused its corporate seal to be hereunto affixed and attested by its Assistant Secretary, the day and year first above written.

SEALED and
DELIVERED in the
presence of us:

CONSOLIDATED RAIL CORPORATION

By:

Robert J. Ryan

Robert W. Ryan
Director-Real Estate

ATTEST:

Robert J. Ryan

Shirley C. Jackson
Assistant Secretary

COMMONWEALTH OF PENNSYLVANIA)

: SS

COUNTY OF PHILADELPHIA)

BE IT REMEMBERED, that on this 28th day of August in the year One Thousand Nine Hundred and Ninety-six (1996), before me, the subscriber, a Notary Public for the Commonwealth and County aforesaid, personally appeared Robert W. Ryan, Director-Real Estate of CONSOLIDATED RAIL CORPORATION, the corporate Grantor named in the within Instrument, who I am satisfied is the person who has signed the within Instrument on behalf of said Corporation; and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed and delivered the same as such officer aforesaid; that the foregoing Instrument is the voluntary act and deed of said Corporation, made by virtue of authority from its Board of Directors; and that the full and actual consideration paid or to be paid for the transfer of title to realty evidenced by the within Instrument as such consideration is defined in P.L. 1988, C. 49, Sec. 1(c), is TWO HUNDRED FIFTY THOUSAND Dollars (\$250,000.00).

Elizabeth C. Gallagher
Notary Public

NOTARIAL SEAL
ELIZABETH C. GALLAGHER, Notary Public
City of Philadelphia, Phila. County
My Commission Expires May 31, 1999

CASE NO. 72013

DEED TO

NEW JERSEY TRANSIT CORPORATION

EXHIBIT "A"

Hudson County, New Jersey

Parcel 203C, Line Codes 0201 and 0501

MAPS referred to in the description are on file in the office of New Jersey Transit Corporation, One Penn Plaza, Newark, New Jersey 07105-2246.

BEING a part or portion of the same premises which R. D. Timpany, as Trustee of the property of the Central Railroad of New Jersey, Debtor, by Conveyance Document No. CNJ-CRC-RP-7, dated March 30, 1976 and filed and recorded in the Office of the Secretary of State of New Jersey, on October 12, 1978, and a part or portion of the same premises which Robert C. Haldeman, as Trustee of the property of the Lehigh Valley Railroad Company, Debtor, by Conveyance Document LV-CRC-RP-2, dated March 29, 1976 and filed and recorded in the Office of the Secretary of State of New Jersey on October 12, 1978 and in the County of Hudson Registrar's office on February 11, 1980, granted and conveyed unto Consolidated Rail Corporation.

ALL THAT CERTAIN piece or parcel of land of the Grantor, being a portion of the line of railroad know as the Jersey Central Main Line (a.k.a. the Bayonne Industrial Track), and identified as Line Code 0201, and a portion of the line of railroad known as the Lehigh Valley Main Line and identified as Line Code 0501, situate in the City of Jersey City, County of Hudson and State of New Jersey, which is bounded and described in accordance with a Plat of Survey, identified as "GATEWAY TRANSIT HUB, GATEWAY AREA PHASE I (COAL YARD PROPERTY), CITY OF JERSEY CITY, COUNTY OF HUDSON, PARCEL 203C, SCALE 1" - 110', prepared by Paul J. Emilius, Jr. PLS, License No. 37186, of the State of New Jersey, and described as follows:

EXHIBIT "A" CONTAINS 3 PAGES, OF WHICH THIS IS PAGE 1 OF 3.

A COPY OF THIS DEED
HAS BEEN SENT TO ADDRESSOR'S OFFICE

BK5124PG263



GEOD CORPORATION

PHOTOGRAMMETRIC SCIENCES - SURVEY TECHNOLOGIES

Parcel No. 203C

Beginning at point, said point being the common corner for Lot 3, Block 2033, Lot 7A, Block 2033, Lot 8, Block 2033, and Lot 4 Block 2033, Thence N 64° 11' 54" E, a distance of 298.27 feet to a point, thence, by a curve, curving to the left, (not tangent to the preceding line), having a radius of 1015.80 feet, an arc length of 229.81 feet, a chord bearing of S 85° 42' 11" E and a chord length of 229.32 feet to a point, thence by a line (not tangent to the preceding arc) S 64° 11' 54" W, a distance 388.56 feet to a point, thence S 24° 29' 39" E, a distance of 45.05 feet to a point, thence N 84° 15' 21" E, a distance of 72.75 feet to a point, thence N 66° 20' 21" E, a distance of 107.00 feet to a point, thence S 61° 32' 23" W, a distance of 595.88 feet to a point, thence N 42° 30' 35" E, a distance of 274.99 feet to a point, thence, by a curve, curving to the left, (not tangent to the preceding line), having a radius of 361.00 feet, an arc length of 129.21 feet, a chord bearing of N 0° 42' 49" E and a chord length of 128.52 feet to the point of beginning. Containing 1.726 acres more or less. Said parcel also being Block 2033, Lot 5, Lot 5A and a portion of Lot 8 in the Hudson County Tax Maps of the City of Jersey City.

Subject to all public utility easements, recorded and unrecorded affecting the herein described premises.

Being the same property as shown on a map entitled "Gateway Transit Hub, Gateway Area Phase 1 (coal yards property), City of Jersey City, County of Hudson, Parcel 203C".

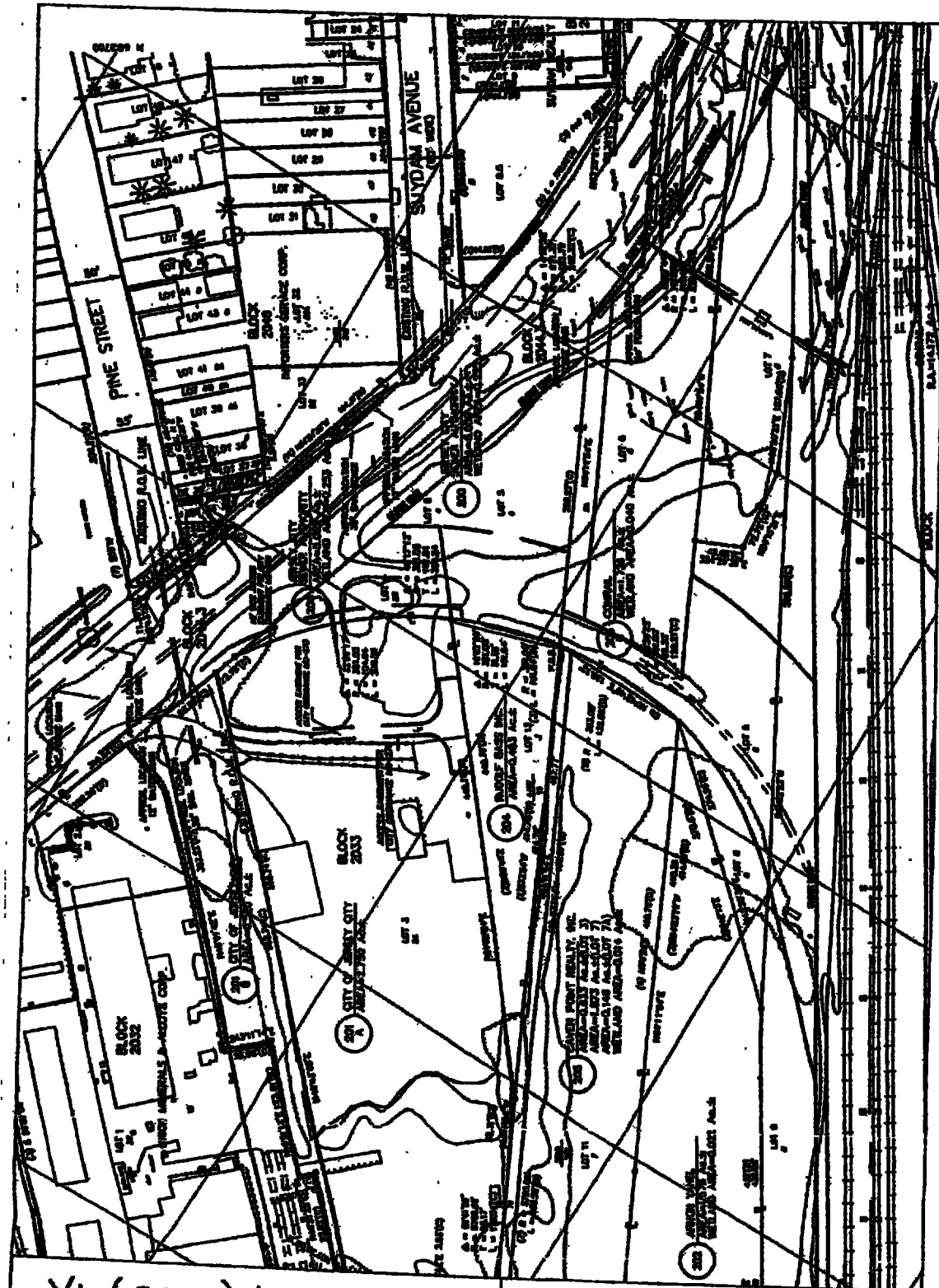
Prepared by GEOD Corporation, Newfoundland, New Jersey.

Paul J. Emiluis, Jr.

Paul J. Emiluis, Jr., PLS - Licence No. 37186

A COPY OF THIS DEED
HAS BEEN SENT TO ASSESSOR'S OFFICE

BK 5124 PG 264



VI (8201) /3
LC. 0501

Via (8271) /2
LC. 0201

A COPY OF THIS CDD
FOR RETURN SENT TO ADDRESSING OFFICE

GATEWAY TRANSIT HUB
GATEWAY AREA PHASE 1
(COAL YARDS PROPERTY)
CITY OF JERSEY CITY COUNTY OF HUDSON
PARCEL 203C
SCALE: 1" = 110'

CITY OF JERSEY CITY
AREA=2.750 AC.±

BLOCK
2033

SHEET 3

IMPORTERS SERVICE CORP.

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LOT 99
LOT 100

LOT 3

ACCESS EASEMENT FOR
CITY ORDINANCE NO. 274

204
RUDOLF BASS INC.
AREA=0.483 AC.±

LOT 5

PONTE REALTY, INC.
0.613 AC.± (LOT 3)
1.573 AC.± (LOT 7)
0.146 AC.± (LOT 7A)
NO AREA=0.014 AC.±

(1) 0.002 AC.± (LOT 10)
(2) 0.002 AC.± (LOT 11)
(3) 0.002 AC.± (LOT 12)
(4) 0.002 AC.± (LOT 13)
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205
CONGAL
AREA=1.728 AC.±

200
JERSEY CITY
SEWER AUTHORITY
AREA=4.008 AC.±

LOT 5

APPROX. LOCATION
12" WATER MAIN

APPROX. LOCATION
12" FORCE MAIN

LOT 5

LOT 8

LOT 7

LOT 5

LOT 5

LOT 5

EXISTING R.O.W. LINE

8 SUDAM AVENUE

SUDAM REALTY CO.

2047

2047

2047

2047

2047

2047

2047

2047

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2047

QUITCLAIM DEED (NJ)

THIS DEED, made the 19th day of November, in the year of our Lord One Thousand Nine Hundred and Ninety-six (1996),

BETWEEN CONSOLIDATED RAIL CORPORATION, a Corporation of the Commonwealth of Pennsylvania, having an office at Two Commerce Square, 2001 Market Street, Philadelphia, Pennsylvania, 19101-1419, hereinafter referred to as the Grantor, and **NEW JERSEY TRANSIT CORPORATION**, an instrumentality of the State of New Jersey, having a mailing address of One Penn Plaza East, Newark, NJ 07105, hereinafter referred to as the Grantee.

WITNESSETH, that the said Grantor, for and in consideration of the sum of TWO HUNDRED SEVENTY THOUSAND DOLLARS (\$270,000.00) lawful money of the United States of America, unto it well and truly paid by the said Grantee, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, Grantor does by these presents, remise, release and forever quitclaim unto the said Grantee, the heirs or successors and assigns of the said Grantee, all right, title and interest of the said Grantor of, in and to the Premises as more particularly described on Exhibit 'A' appended hereto and made a part hereof.

This Deed is subject to the provisions of an Agreement of Sale by and between Consolidated Rail Corporation and New Jersey Transit Corporation dated February 2, 1996 governing apportionment of environmental responsibility as between Grantor and Grantee including Grantee's and Grantor's successors, assigns and grantees.

UNDER and SUBJECT, however, to (1) whatever rights the public may have to the use of any roads, alleys, bridges or streets crossing the Premises, (2) any streams, rivers, creeks and water ways passing under, across or through the Premises, and (3) any easements or agreements of record or otherwise affecting the Premises, and to the state of facts which a personal inspection or accurate survey would disclose, and to any pipes, wires, poles, cables, culverts, drainage courses or systems and their appurtenances now existing and remaining in, on, under, over, across and through the Premises, together with the right to maintain, repair, renew, replace, use and remove same.

THIS INSTRUMENT is executed and delivered by Grantor, and is accepted by Grantee, subject to the covenants set forth below, which shall be deemed part of the consideration of this conveyance and which shall run with the land and be binding upon, and inure to the benefit of, the respective heirs, legal representatives, successors and assigns of Grantor and Grantee. Grantee hereby knowingly, willingly, and voluntarily waives the benefit of any rule, law, custom, or statute of the State of New Jersey now or hereafter in force with respect to the covenants set forth below:

(1.) Grantor shall neither be liable or obligated to construct or maintain any fence or similar structure between the Premises and adjoining land of Grantor nor shall Grantor be liable or obligated to pay for any part of the cost or expense of constructing or maintaining any fence or similar structure,

TAX REFERENCE:

Block 2047, Lot 25 on
the Tax Maps for the
City of Jersey City, Hudson
County, NY

THIS INSTRUMENT PREPARED BY:

Robert J. Tracy
Robert J. Tracy, Property Manager
Consolidated Rail Corporation
510 Thornall Street, Suite 390
Edison, NJ 08837

and Grantee hereby forever releases Grantor from any loss or damage, direct or consequential, that may be caused by or arise from the lack or failure to maintain any such fence or similar structure.

(2.) Grantee hereby forever releases Grantor from all liability for any loss or damage, direct or consequential, to the Premises and to any buildings or improvements now or hereafter erected thereon and to the contents thereof, which may be caused by or arise from the normal operation, maintenance, repair, or renewal of Grantor's railroad, or which may be caused by or arise from vibration resulting from the normal operation, maintenance, repair or renewal thereof.

(3.) Grantee hereby forever releases Grantor from any liability for any loss or damage, direct or consequential, which may be caused by or arise from the sliding, shifting or movement of any part of any adjoining embankment of Grantor, or by the drainage or seepage of water therefrom, upon or into the Premises, or upon, under, or into anything which may be erected or placed thereon.

(4.) Grantor shall not be liable or obligated to provide lateral support for the surface of the Premises, and Grantee waives all right to ask for, demand, recover or receive any relief or compensation for any damage that may be caused by the sliding, shifting, or movement of any part of the slope or embankment supporting the Premises. Grantee shall use due diligence to prevent the drainage or seepage of water, or the precipitation of snow or ice, or anything whatever, from the Premises onto, under or upon the adjoining and adjacent lands of Grantor.

(5.) In the event the tracks or land of Grantor are elevated or depressed, or the grades of any streets, avenues, roads, lanes, highways or alleys over such railroad in the vicinity of the Premises are changed so that they shall pass overhead or underneath such tracks or land, or in the event any grade crossing is vacated and closed, Grantee forever releases Grantor from all liability for any loss or damage, direct or consequential, caused by or arising from the separation or change of grades of such railroad or such streets, avenues, roads, lanes, highways, or alleys, or from the vacating and closing of any grade crossing.

(6.) Should a claim adverse to the title hereby quitclaimed be asserted and/or proved, no recourse shall be had against the Grantor herein.

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, property, claim and demand whatsoever of it, the said Grantor as well at law as in equity or otherwise howsoever of, in and to the same and every part thereof, UNDER and SUBJECT and provided as aforesaid.

TO HAVE AND TO HOLD, all and singular the said Premises, together with the appurtenances, unto the Grantee, the heirs or successors and assigns of the Grantee, forever, UNDER and SUBJECT and provided as aforesaid.

THE words "Grantor" and "Grantee" used herein shall be construed as if they read "Grantors" and "Grantees", respectively, whenever the sense of this instrument so requires and whether singular or plural, such words shall be deemed to include at all times and in all cases the heirs, legal representatives or successors and assigns of the Grantor and Grantee.

IN WITNESS WHEREOF, the Grantor has caused this Indenture to be signed in its

name and behalf by its Director-Real Estate duly authorized thereunto and has caused its corporate seal to be hereunto affixed and attested by its Assistant Secretary, the day and year first above written.

SEALED and
DELIVERED in the
presence of us:

CONSOLIDATED RAIL CORPORATION
By:

H. M. Hennigan

Robert W. Ryan
Robert W. Ryan,
Director-Real Estate

ATTEST:

H. M. Hennigan

Theresa C. Jackson
Assistant Secretary

COMMONWEALTH OF PENNSYLVANIA)

COUNTY OF PHILADELPHIA)

BE IT REMEMBERED, that on this 19th day of November in the year One Thousand Nine Hundred and Ninety-six (1996), before me, the subscriber, a Notary Public for the Commonwealth and County aforesaid, personally appeared Robert W. Ryan, Director-Real Estate of CONSOLIDATED RAIL CORPORATION, the corporate Grantor named in the within instrument, who I am satisfied is the person who has signed the within instrument on behalf of said Corporation; and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed and delivered the same as such officer aforesaid; that the foregoing instrument is the voluntary act and deed of said Corporation, made by virtue of authority from its Board of Directors; and that the full and actual consideration paid or to be paid for the transfer of title to realty evidenced by the within instrument as such consideration is defined in P.L. 1988, C. 49, Sec. 1(c), is TWO HUNDRED SEVENTY THOUSAND Dollars (\$270,000.00).

Linda A. Kowczyk
Notary Public



CASE NO. 72029

DEED TO

NEW JERSEY TRANSIT CORPORATION

EXHIBIT "A"

Hudson County, New Jersey

Parcel 203B, Line Code 0501

MAPS referred to in the description are on file in the office of New Jersey Transit Corporation, One Penn Plaza East, Newark, New Jersey 07105-2246.

BEING a part or portion of the same premises which Robert C. Haldeman, as Trustee of the property of the Lehigh Valley Railroad Company, Debtor, by Conveyance Document LV-CRC-RP-2, dated March 29, 1976 and filed and recorded in the Office of the Secretary of State of New Jersey on October 12, 1976 and in the County of Hudson Registrar's office on February 11, 1980, granted and conveyed unto Consolidated Rail Corporation.

ALL THAT CERTAIN piece or parcel of land of the Grantor, being a portion of the line of railroad known as the Lehigh Valley Main Line and identified as Line Code 0501, situate in the City of Jersey City, County of and State of New Jersey, which is bounded and described in accordance with a Plat of Survey, identified as "GATEWAY TRANSIT HUB, GATEWAY AREA PHASE 1 (COAL YARD PROPERTY), CITY OF JERSEY CITY, COUNTY OF HUDSON, PARCEL 203B, SCALE 1" = 90', prepared by Paul J. Emilius, Jr. PLS, License No. 37186, of the State of New Jersey, and described as follows:

EXHIBIT "A" CONTAINS 3 PAGES, OF WHICH THIS IS PAGE 1 OF 3.

As highlighted on attached map.



GEOD CORPORATION

PHOTOGRAMMETRIC SCIENCES - SURVEY TECHNOLOGIES

Parcel No. 203B

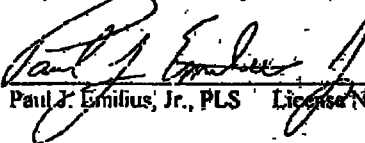
Beginning at a point, said point being the common corner for Lot 24C, Block 2047 and Lot 25, Block 2047 and located in the westerly right-of-way line of Communipaw Avenue (60.00 feet) as it now exists, thence along the westerly right-of-way line of Communipaw Avenue S 43° 05' 53" E, a distance of 125.56 feet to a point, thence S 60° 56' 08" W a distance of 270.31 feet to a point, thence, by a curve, curving to the right, (not tangent to the preceding line), having a radius of 941.80 feet, an arc length of 306.82 feet, a chord bearing of S 83° 36' 48" W and a chord length of 305.46 feet to a point, thence, by a line (not tangent to the preceding arc) N 60° 53' 38" E, a distance of 246.81 feet to a point, thence N 32° 05' 45" W, a distance of 23.24 feet to a point, thence, N 51° 41' 48" E, a distance of 55.09 feet to a point, thence, S 43° 18' 45" E, a distance of 45.36 feet to a point, thence, N 57° 23' 19" E, a distance of 72.65 feet to a point, thence, N 50° 46' 19" E, a distance of 79.08 feet to the point of beginning. Containing 1.121 acres, more or less. Said parcel also being Block 2047, Lot 25 in the Hudson County Tax Maps of the City of Jersey City.

Above described parcel being subject to all public utility easements, recorded and unrecorded, and slope easements for Communipaw Avenue.

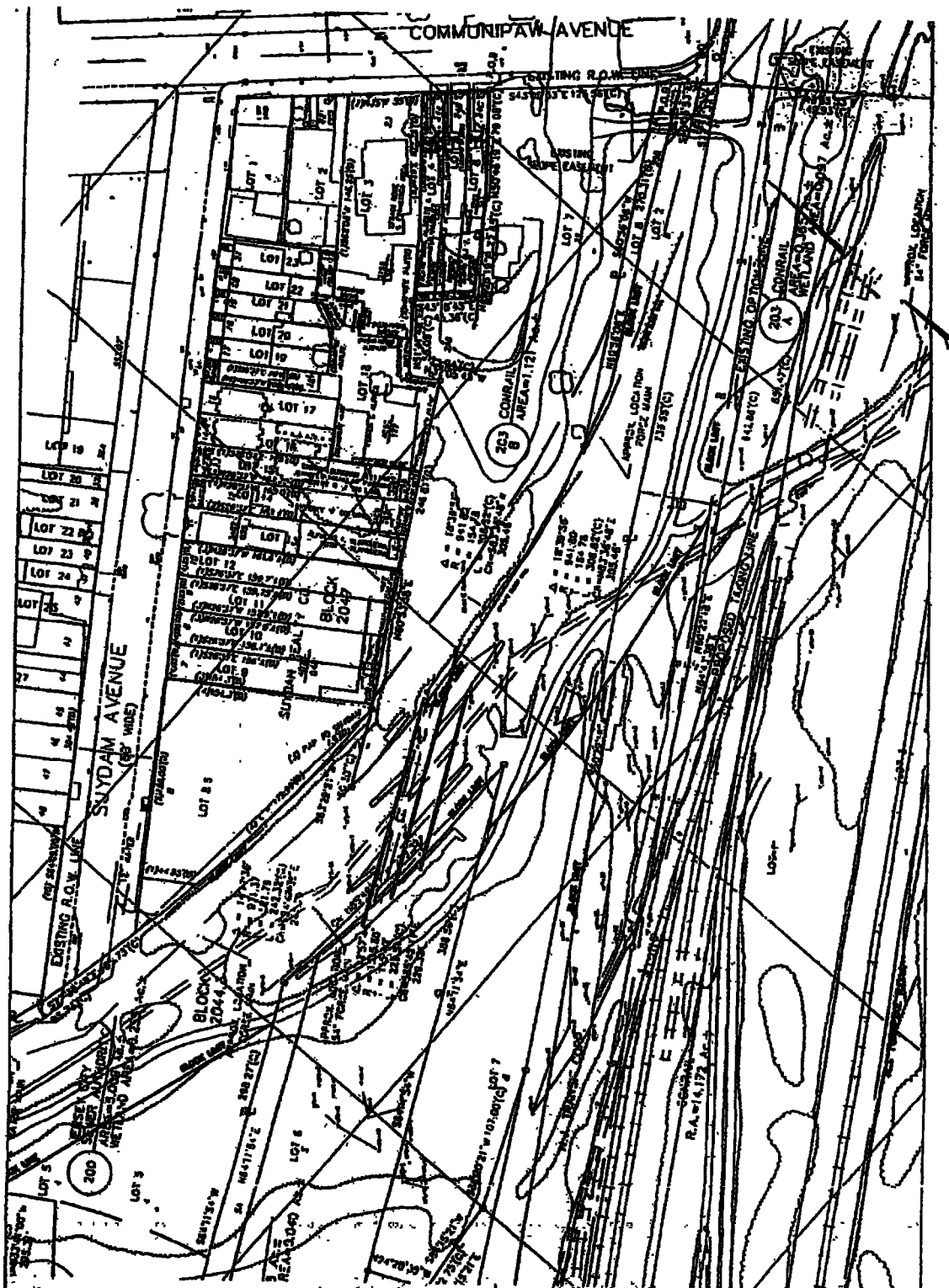
Together with all right, title and interest that the owner may have in Communipaw Avenue, contiguous to the herein described premises;

Being the same property as shown on a map entitled "Gateway Transit Hub, Gateway Area Phase I (Coal Yards Property), City of Jersey City, County of Hudson, Parcel 203B".

Prepared by GEOD Corporation, Newfoundland, New Jersey.


Paul J. Emilius, Jr., PLS License No. 37186

pw 10/78



V₁ (8201) | 3
L.C. 0501

GATEWAY TRANSIT HUB
GATEWAY AREA PHASE 1
(COAL YARDS PROPERTY)
CITY OF JERSEY CITY COUNTY OF HUDSON
PARCEL 203B
SCALE: 1" = 90'



RPG

Christine Todd Whitman
Governor

John J. Haley, Jr.
Board Chairman

Shirley A. DeLibero
Executive Director

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

December 18, 1997

Ms. Maureen Dolce, Tax Collector
Jersey City - City Hall
280 Grove Street
Jersey City, N. J. 07302

RE: Taxes - Blocks 2020, 2033, Lots 5 & 11

Dear Ms. Dolce:

NJ TRANSIT has become the owner of Blocks 2020, 2033, Lots 5 and 11 by virtue of the Declaration of Taking dated September 15, 1997.

New Jersey Transit Corporation ("NJ TRANSIT"), an instrumentality of the State of New Jersey, established pursuant to N.J.S.A. 27:25-4, has acquired the real property within your municipal boundaries as noted above. Pursuant to N.J.S.A. 27:25-16, property acquired or used by NJ TRANSIT under the provisions of the Public Transportation Act of 1979, N.J.S.A. 27:25-1 et seq. is exempt from taxation. In order to qualify for an exemption from local taxation, N.J.S.A. 54:4-3.3b provides that:

"Such property shall become exempt on January 1 of the calendar year next following the date of acquisition, provided that the tax assessor of the municipalities in which such property is located is given written notice of the acquisition by certified mail on or before January 10 of said calendar year next following (acquisition)..."

The referenced property was acquired in order to develop NJ TRANSIT's Hudson-Bergen, Light Rail Transit System and, therefore, the property is exempt from taxation.

If you have any questions, please do not hesitate to call me at (201) 491-7318.

Sincerely,

Rudolph F. Geurds
Director, Property Management

Attachment

c: Mark Gordon
Suzanne Silverman

One Penn Plaza East, Newark NJ 07105-2246 (201) 491-7000

009491

CHARGE RECEIVED

RECORD AND RETURN TO: N.J.D.O.T.
Legal Processing Section
1035 Parkway Avenue, P.O. Box 614
Trenton, NJ 08625
97 OCT 29 PM 2:24
Barbara S. Annally
HUDSON COUNTY
REGISTERED
2774

JRK:cy NJ Transit-205
Peter Verniero
Attorney General of New Jersey
Attorney for Plaintiff
Division of Law/Transportation
Richard J. Hughes Justice Complex
Market and New Warren Streets
CN-114
Trenton, New Jersey

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, HUDSON COUNTY
DOCKET NO. HUD-L-7801-97

NEW JERSEY TRANSIT CORPORATION,)	
)	
a body corporate and politic,)	CIVIL ACTION
)	
Plaintiff,)	DECLARATION OF TAKING
)	
v.)	
)	
CAVEN POINT REALTY, INC.,)	
a Corporation of New Jersey; et al,)	
)	
)	
Defendants.)	
)	
)	

Plaintiff, New Jersey Transit Corporation, a body corporate and politic, hereby declares that:

1. Possession of the land and premises acquired in fee, along with those rights acquired under any easement,

described in the Complaint is hereby taken by and for the use of the New Jersey Transit Corporation.

2. The New Jersey Transit Corporation is entitled to the exclusive possession and use of the land premises acquired in fee and is entitled to exercise the rights acquired under any easement as set forth within the description.

3. Plaintiff is authorized by N.J.S.A. 27:25-13 (b) et seq., to acquire by purchase, lease, gift or otherwise, or by condemnation in the manner provided in N.J.S.A. 20:3-1 et seq., on the terms and conditions and in the manner it deems proper, any land or property real or personal, tangible or intangible which it may determine is reasonably necessary for the purposes of the corporation under the provisions of N.J.S.A. 27:25-1 et seq.

4. As to any easement right acquired hereunder, the owner of record shall retain all other rights to use the property over which the easement is located, for any legal purpose not inconsistent, contrary or in conflict with the terms of the easement as set forth within Exhibits "A" and "B". Maintenance of the property over which the easement is located shall remain the obligation of the owner except to the extent stated otherwise in Exhibit "A".

5. The premises hereby taken in fee and/or easement rights acquired are described in Exhibits "A" and "B".

6. The estate or interest taken is either a fee simple absolute, or such lesser interests, or both, as are set forth in the Exhibits "A" and "B: annexed hereto.

7. The sum of money estimated by the plaintiff to be just compensation for the taking is \$ 600,000, which sum is deposited with the Clerk of the Superior Court.

8. The names and addresses of all condemnees known to the Plaintiff and the nature of their alleged interest in said property are as follows: The owner of record of the said land

and premises is The owner of record of the said land and premises is Caven Point Realty, Inc., a Corporation of New Jersey, address, Agent, Ralph A. Nappi, c/o Nappi Trucking Corp., Route 34, Matawan, New Jersey 07747; other persons and corporations appearing of record to have an interest in the said land and premises, and persons and corporations who have or may claim to have an interest therein as are known to the plaintiff are Summit Bank, a Banking Corporation of New Jersey successor to United Jersey Bank, by name change on July 15, 1996 and successor to United Jersey Bank/Central N.A., by name change in 1994 and successor to United Jersey Bank/Franklin State by named change on July 29, 1988 and further successor to Franklin State Bank by name change on February 26, 1986, address, 301 Carnegie Center, Princeton, New Jersey 08543, which, by reason of a mortgage made by Caven Point Realty, Inc., a Corporation of New Jersey, to United Jersey Bank/Franklin State, dated April 17, 1986 and recorded in the Office of the Register of Deeds of Hudson County on April 23, 1986, in Book 3397 of Mortgages, at page 215, and for the further reason of a mortgage made by Caven Point Realty, Inc., a Corporation of New Jersey, to New Jersey Economic Development Authority, a Body Politic and Corporate dated September 20, 1985, and recorded in the Office of the Register of Deeds of Hudson County on September 23, 1985 in Book 3288 of Mortgages, at page 149, and assigned to Franklin State Bank by Assignment of Mortgage dated September 20, 1985, and recorded in the Office of the Register of Deeds of Hudson County on September 23, 1985, in Book 3288 of Assignment of Mortgages at page 209, and for the further reason of an assignment of leases and rents from the owner to United Jersey Bank/Central, N.A. National Banking Association, dated May 16, 1994, and recorded in the Office of the Register of Deeds of Hudson County June 13, 1994, in Book 4737 of Mortgages, at page 325, and for the further reason of an assignment of leases from the owner to New Jersey

Economic Development Authority, dated September 20, 1985, and recorded in the Office of the Register of Deeds of Hudson County on September 23, 1985 in Book 3288 of Mortgages, at page 200, the said Summit Bank, a Banking Corporation of New Jersey, has or may claim to have an interest therein; State of New Jersey, address, Attorney General's Office, Collection Section, Justice Complex, Market and New Warren Streets, Trenton, New Jersey, which, by reason of possible Corporation Franchise Taxes due and unpaid to it by Caven Point Realty, Inc., a Corporation of New Jersey, the said State of New Jersey, has or may claim to have an interest therein; Sam Weinreb, Bella Weinreb, Frima Weinreb, Bracha Ribowsky, Chana Kotler and Zipporah Schwartzman, address 152 Parkville Avenue, Brooklyn, New York and Caven Point 1818 Associates, a Defunct New Jersey Limited Partnership, address, Agent, Robert P. Weinreb, 28 W. 22nd Street, Bayonne, New Jersey, which, by reason of an Easement Grant from the Owner to them dated May 31, 1994, recorded in the Office of the Register of Deeds of Hudson County July 19, 1994 in Book 4751 of Deeds, at page 284, the said Sam Weinreb, Bella Weinreb, Frima Weinreb, Bracha Ribowsky, Chana Kotler and Zipporah Schwartzman and Caven Point 1818 Associates, have or may claim to have an interest therein; Allwaste Tank Cleaning, Inc., a Corporation of Georgia, Agent: address, Agent: Prentice-Hall Corp. SYS/NJ, 830 Bear Tavern Road, West Trenton, New Jersey 08628, which, by reason of being a tenant, occupant or lessee on the said land and premises, has or may claim to have an interest therein; City of Jersey City, in the County of Hudson, a municipal corporation of New Jersey, address, Clerk, Robert Byrne, City Hall, 280 Grove Street, Jersey City, New Jersey, 07302, which, by reason of certain taxes and assessments, duly levied and assessed, and by

further reason of farmland roll-back taxes assessed, or to be assessed, has or may claim to have an interest therein.

Shirley DeLibero
Executive Director

Dated: _____

9/15/47

By: _____

Frank Russo, Senior Director
Office of New Rail Construction

POOR COPY

POOR COPY

Commencing at a point having coordinates of North 681609.31 East 611215.48 in the New Jersey State Plane Coordinate System (NAD83), said point being in the easterly line of Caven Point Road (60' wide), at a point being 100.00' west and parallel to the filed center line of the main line of the Central Railroad of New Jersey, filed April 27th 1863, Running from said point; Thence

A) N58°27'54"E 1444.64' to a point being common corner of Lot 7 and 9 at the north line of Lot 8; Thence
B) N31°32'06"W 144.97' along a line common to Lots 7 and 9 to a point being in the southerly line of Lot 5 at the westerly Taking Line, said point being the Point Of Beginning; Thence

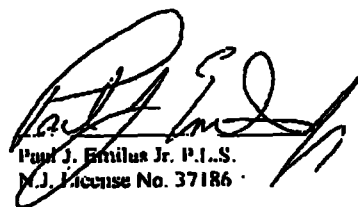
- 1) N58°27'54"E 25.00' along the common line between Lot 5 and 9 to a point in the easterly line of Lot 5; Thence
- 2) Along the same on a non-tangent curve to the right having a radius of 5674.65' an arc length of 567.84' being suspended by a chord having a bearing of N61°19'54"E and a distance of 567.60' to a point being in the common line between Lots 11 and 10; Thence
- 3) Along the same N64°11'54"E 410.39' to a point at the northeasterly corner of Lot 11; Thence
- 4) Along the common line of Lot 11 and 5, along a non-tangent curve to the left having a radius of 361.00' an arc length of 129.21' being suspended by a chord having a bearing of N00°42'49"E and a length of 128.52' to a point in the dividing line between Lot 11 and 13; Thence
- 5) Along the northerly lot line of Lot 11 and the southerly line of Lots 13 and 3, S64°11'54"W 467.77' to a point in the dividing line between Lots 3 and 11; Thence
- 6) Along the same on a curve to the left having a radius of 5789.65' and an arc length of 170.34 to a point common to Lots 12, 11, 9 and 3; Thence;
- 7) Along a line common to Lots 12 and 11 S09°05'18"E 10.54' to a corner in the same; Thence
- 8) Along the same S61°39'14"W 179.87' to a point being common to Block 2033 Lots 12 and 11, Block 2020 Lots 5 and 10; Thence
- 9) Along the common line of Lot 5 and 10, S59°10'27"W 250.06' to the afore mentioned taking line; Thence
- 10) Along the taking line S31°32'06"E 103.92' to a point in the common line between lots 5 and 9, to the Point Of Beginning.


CONTAINING 2.643 AC MORE OR LESS

LOT NUMBERS REFER TO THE N.J. STATE DESIGNATIONS, BEARINGS REFER TO N.J.S.P.C.S. (NAD83)

THIS DESCRIPTION HAS BEEN PREPARED IN ACCORDANCE WITH A SURVEY BY GEOD CORPORATION

EXHIBIT A


Paul J. Emilus Jr., P.L.S.
N.J. License No. 37186

	PARCEL AREA 2.643AC AREA OF TAKING 1.643AC REMAINING PARCEL AREA 0.999AC
	PROPERTY PARCEL MAP PARCEL No 205 DATE July 17 1997 OWNER CAVEN POINT REALTY
HUDSON-BERGEN LIGHT RAIL TRANSIT SYSTEM	BLOCK No 2020,2033 LOT No 5&11 CITY OF JERSEY CITY HUDSON CO., N.J.

**NJT HUDSON -BERGEN
LIGHT RAIL TRANSIT SYSTEM
PARCEL 205
CAVEN POINT REALTY, INC.**

**PLEASE REFER TO A PARCEL MAP THAT WAS FILED IN THE MAP
ROOM OF THE HUDSON COUNTY REGISTER'S OFFICE ON AUGUST 5, 1997
UNDER MAP NO. 3631**

EXHIBIT B

GLOEDE VERIFIED STATEMENT

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BEFORE THE

SURFACE TRANSPORTATION BOARD

STB DOCKET NO. AB-167 (Sub-No. 1190X)

CONSOLIDATED RAIL CORPORATION – ABANDONMENT EXPEMPTION
IN HUDSON COUNTY, NJ

VERIFIED STATEMENT OF RAYMOND GLOEDE

I, Raymond Gloede, being duly sworn and upon my oath, submit this Verified Statement in response to the Answer of Eric Strohmeier and James Riffin (the "Offerors") to the Surface Transportation Board's August 12, 2009 Show Cause Order in the above captioned proceeding (the "Answer").

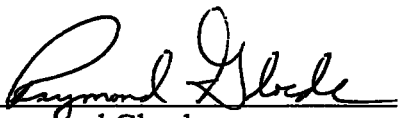
1. I am employed in the Transportation Department of Consolidated Rail Corporation ("Conrail") as the Assistant Superintendent for Conrail's North Jersey operations, a position I have held since 1999. Prior to my current position, I have held various positions in Conrail Transportation dating back to 1974 when I joined Conrail. As Assistant Superintendent, I report to the Transportation Superintendent and assist him in managing Conrail's train operations throughout Northern New Jersey. In that capacity, I am completely familiar with the routing and frequency of trains on the various main lines and industrial lead tracks and where customers are located along those rail lines and how and when they are provided rail service. I am also familiar with Conrail's specifications (which comport with general railroad industry standards) for installing switches.

2. I am familiar with the Answer specifically with respect to the proposal of the Offerors to locate a transloading facility either through installing a switch on the National Docks Branch ("National Docks") (just west of Linden Avenue in Jersey City) or through installing a switch on the Bayonne Industrial Track immediately to the north of its connection to the National Docks at around Mile Post ("MP") 4.20 on the Line. Neither of these proposed switches are feasible from either an operational and/or engineering standpoint.

3. The National Docks is a main line of Conrail that operates between Upper Bay just east of Conrail's Oak Island Yard, Conrail's major hump yard to CP Croxton where it connects to other main lines. It is a single track line that connects a significant amount of rail traffic flowing in both directions. It also is the main connection to a number of industrial tracks, including the Greenville Yard Lead, the Tropicana Lead and the lead track to the Port Jersey Railroad. It also is the main route for CSX intermodal trains to the Port of Newark, New Jersey. Essentially it is a through route for major rail

traffic between Oak Island and points east and north. Traffic flows in both directions but trains are often held on signal indication at CP Green or CP Croxton for extended periods of time to allow trains to clear the single track from the other direction. The National Docks does not have, nor to my recollection has it ever had, any switches directly connecting it to any rail customers. To switch a customer directly from the National Docks would tie up the line for lengthy periods while the customer was being switched. Such an operation would disrupt train operations for a good portion of Conrail's North Jersey operations, which are already extremely congested. It would not be operationally advisable, if even doable.

4. The other proposal for a transloading facility is to install a switch on the Bayonne Industrial Track where it connects to the National Docks near MP 4.2 north of Chapel Avenue. The same issues raised in paragraph 4 apply if this proposed facility were served from the National Docks. If the traffic were to be routed over the Bayonne Industrial Track it would still be fatally flawed. The portion of the Bayonne Industrial Track where the Offerors propose to install a switch constitutes what is called an "S" or reverse curve. The "S" stands for "snake" because the track curves in one direction and then in the other. While it is not a pronounced "S" curve, the aerial map attached to Robert W. Ryan's Verified Statement clearly shows that it is not run in a direct line but contains two curves. Railroad engineering requirements are very strict about how much tangent (straight) track there should be between curves before a switch can be installed between the curves. From my field observation of the track, there is insufficient tangent to accommodate a switch on this portion of the Bayonne Industrial Track and still comply with Conrail's engineering standards. There may be other issues having to do with the curvature of the loading tracks but I understand that no track layout was submitted by the Offerors to make that judgment. I will note that in respect to other potential track configuration issues, I observed that there is an elevation change to the south of the track that would preclude or hinder the installation of a siding and there appears to be insufficient room for a transloading facility to the north because of the proximity of the New Jersey Light Rail Operation. In summary, Conrail would not support a transloading operation at this location.

 9/09/09
Raymond Gloede
Assistant Superintendent
Conrail
611 Delancy Street
Newark, N.J. 07105